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SUPREME COURT OF THE UNITED STATES.

No. 132.

WM. K. POST AND AL., CLAIMANTS OF THE CARGO, &C., OF THE SHIP RICHMOND, APPT'S,

VS.

JOHN H. JONES AND AL., LIBELLANTS.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

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UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, John W. Nelson, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify, that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this tenth day of November, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the said United States the eightieth.

[SEAL.]

J. W. NELSON,
Clerk.

At a stated term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the city of New York, on Tuesday, the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and fifty-two.

Present, the Hon. Andrew T. Judson, District Judge.

WALTER R. JONES, et al.,
vs.
THE CARGO OF THE SHIP RICHMOND, &c.

May 23d, 1850. The libellant files his libel in the words and figures following, viz:

IN THE UNITED STATES DISTRICT COURT,
For the Southern District of New York.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States, for the Southern District of New York, in the Second Circuit:

The libel and complaint of Walter R. Jones, Joseph Sampson, John H. Jones, George T. Trimble, John D. Jones, Charles P. Stewart, Amos Willetts, Samuel Willetts, Joshua T. Jones, Jacob C. Hewlett, Charles H. Jones, and Charles Hewlett, libellants, in behalf of themselves, and all others interested *against* the cargo, materials,

and furniture of the ship Richmond, or such parts thereof as may be found within this district unsold, and this proceeds of such thereof as may have been sold, and against all persons intervening for their interest in the same, in a cause of adjustment and salvage, civil and maritime.

And thereupon, the libellants allege and articulately propound as follows, viz:

First. That the ship Richmond, in or about the month of July, in the year 1846, started from the port or harbor of Cold Spring, Long Island, in this State and *district*, on a whaling voyage to the South and North Pacific Oceans, or wherever it might be judged expedient by the master to proceed or course in pursuit of whales, and proceeded in and upon such voyage accordingly; that there was afterwards, and in the course of such voyage, taken and secured, in and on board of the said ship by the officers and crew of the same, a considerable cargo of *whale* oil, sperm oil, and whalebone, of great value; and the said ship was in the successful prosecution of the voyage until on or about the second day of August, in the year 1849, when, having nearly a full cargo on board, well secured, and having started on her return home to port, she being in a fog, ran on or between some rocks, distant about half a mile from the *land*, on the west coast of Behring's Straits, and lay for several days upon, or fast to, such rocks, but without the occurrence of tempestuous weather.

Second. That while the said ship was so disabled, the whaling bark Elizabeth Frith, of Sag Harbor, being in the same neighborhood, and being on her return or about to return home from her whaling cruise, and not yet being full of cargo or catchings, there were, on or about the eighth day of August, in the same year, received and taken on board of the said bark Elizabeth Frith from 600 barrels to 800 barrels, or upwards, of whale oil, and a large quantity—viz, from 7,000 to 14,000 pounds—of whalebone, from the said ship Richmond, which oil and bone had been procured by the officers and crew of the said ship Richmond, and had been prepared, manufactured, secured, and stowed away in the *said* ship Richmond, being partly on deck, partly between decks, and some in other parts of said ship, and constituted a part of the cargo of the said ship Richmond; and there were also received and taken on board said bark Elizabeth Frith, at or about the same time, two chronometers, a medicine chest, compasses, and other articles, being a part of the furniture and materials of the said ship Richmond, belonging to the owners thereof.

Third. That the said bark Elizabeth Frith *has* safely arrived at the port of Sag Harbor, with the said parts of the cargo, materials, and furniture of the Richmond on board, and the said parts of the cargo, materials, and furniture of the Richmond are now within this district, and of great value, and are worth the sum of nine thousand five hundred dollars, and upwards—that is to say, the whale oil at

about 42½ *cents* a gallon, and a barrel averaging 30 gallons, and the whalebone about 32½ cents a pound—and no proceedings have been taken, or appear to be contemplated, by or on the part of the master or owners of the said bark, or by any one claiming salvage or freight, towards adjusting or fixing any amount of salvage or freight as due thereon; on the contrary, the agents and owners of the said bark *Elizabeth* Frith have professed an intention to sell the several parts of the said cargo as their own, unjustly setting up a pretended sale of such cargo, and after the same, or a part of it, was on board of the said bark, by the person acting as master of the said ship Richmond, to his brother, the master of the said bark Elizabeth Frith, acting on behalf of the owners of such bark, for a merely nominal price, which has *not* been paid, and the libellants are apprehensive that the said parts of cargo, materials, and furniture of the Richmond will be sold, or otherwise disposed of, before the same can be reached by the process of this Court.

Fourth. That while the said ship Richmond was so disabled, the whaling ship Panama, of Sag Harbor, being in the same neighborhood, and being on her return or about to return home from her whaling cruise, and not yet being full of *cargo* or takings, there were, on or about the ninth day of August, in the said year, received and taken on board of the said ship Panama from 600 to 700 barrels, or upwards, of whale oil, and a large quantity of whale bone, from the said ship Richmond—which oil and bone had been procured by the crew of the said ship Richmond, and had been prepared, manufactured, secured, *and* stowed away in the said ship Richmond, and constituted a part of the cargo of the said ship Richmond.

Fifth. That the ship Panama has safely arrived at the port of New York, and within this district, with the said parts of the cargo of the Richmond on board of her, the same being of great value, and of the value of eleven thousand five hundred dollars and upwards—to wit, being worth the prices before *mentioned*—and no proceedings have been taken, or appear to be contemplated, by or on the part of the master or owners of the said barque, or by any one claiming salvage or freight, towards adjusting or fixing any amount of salvage or freight as due thereon; on the contrary, the agents and owners of the said ship Panama have proceeded to sell, or are about to sell, the said parts of the cargo taken on board the Panama as their own, setting up a *pretended* sale of such cargo to the master of the said ship Panama, acting on behalf of the owners of the said ship Panama; that proceeds of such sales have come, or about to come, to the hands of the said agents and owners of the Panama, and are within this district; and the libellants claim that the proceeds of any such sale ought to stand in the place of the articles sold and be liable to the claim of the *libellants*.

Sixth. That the libellants, at the time of the obtaining and earning of the said cargo, and at the time of the receipt of the same on

board of such other vessels, were the owners of the said ship Richmond, her tackle, apparel, and furniture, and as such owners became and are entitled to the ownership, possession, control, and disposition of the said cargo and proceeds thereof, subject only to such fair and reasonable amount of *salvage* and freight, or either of them, as this Court may adjust and fix in the premises; and although by the terms of the shipping articles with the master, officers, and crew of the said ship Richmond, the owners, upon the fulfilment of the *the* conditions thereof, were to pay certain shares of the net proceeds of all that should be obtained by the crew during said voyage, agreeable to the shares set opposite to *their* respective names, as soon after the return of the voyage as the oil or whatever else should be obtained could be divided or sold, and the voyage made up by the owners or agent of said ship, first deducting all such sums as might be due from them to the owners or officers thereof, for advances, supplies, or debts arising from any other consideration; and the said officers and *crew* thereby pledged to the owners their several shares as security for the payment of such owners, and considerable sums still remain due from several of the said crew, the right to collect which the libellants insist upon; yet the libellants further say, they have been requested and urged by and on the part of the surviving officers and some of the crew of the said ship to proceed also in their behalf in this *suit*.

Seventh. That all and singular the premises are true and within the maritime and admiralty jurisdiction of this honorable Court.

Wherefore the libellants pray, that process in due form of law, according to the course of courts of admiralty, and of this honorable Court in causes of admiralty and maritime jurisdiction, may issue against the parts of the cargo, materials, and furniture of the ship Richmond within *this* District, and remaining unsold since their arrival here, and against the proceeds of such thereof as shall have been sold since the arrival of the same within this district; and that all persons having or pretending to have any right, title or interest in the said parts of the cargo, materials, and furniture of the said ship within this district, and remaining unsold since their *arrival* here, and in the proceeds of such thereof as shall have been sold since the arrival of the same within this district, may be cited to appear and answer all and singular the matters so alleged and propounded; and that this honorable Court will be pleased to pronounce in favor of the libellants for the ownership, possession, control, and disposition of the said *cargo*, materials, and furniture of the said ship Richmond, and the proceeds thereof, subject only to such fair and reasonable amount of salvage and freight, or either of them, as may be just, and that this Court will adjust and fix the amount thereof in the premises; and that upon payment thereof, the balance of the said cargo, materials, and furniture, and the proceeds thereof, may be decreed in favor of the libellants, and that this Court *will* pleased to decree such further relief, or such other relief, to the li-

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bellants as shall to law and justice appertain, and to condemn all persons intervening for their interests or claims in the said cargo, materials, and furniture, or the proceeds thereof, in costs, and otherwise right and justice to administer in the premises.

JOHN H. JONES,
One of the libellants, and Agent.
E. H. OWEN, *Proctor.*
CHAS. B. MOORE, *Advocate.*

SOUTHERN DISTRICT OF NEW YORK, *ss*:

The libellant, John H. Jones, of Cold Spring, Queens County, was, on this twenty-third day of May, 1850, duly affirmed before me, that he had read the foregoing libel, and knew the contents thereof, that the matters therein stated within his *own* knowledge were true, and the matters derived from information he believed to be true.

JOHN C. SMITH,
Clerk Queens County.

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of New York.

Filed 23rd May, 1850.

Stipulation for libellants' costs.

Entered into pursuant to the rules and practice of this Court.

Whereas a libel was filed in this Court, on the twenty-third day of May, in the year of our Lord one thousand eight hundred and fifty, by Walter R. Jones and others, against the *cargo*, materials, and furniture of the ship Richmond, &c., for the reasons and causes in the said libel mentioned, and praying that the said cargo, materials, &c., may be condemned and sold to pay the demands of the libellants, and the said libellants, and Smith Woodhull, surety, parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the libellants, or their surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars: Now, *therefore*, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against them by this Court, or, in case of appeal, by the Appellate Court.

JOHN H. JONES,
One of the libellants.
Per CHAS. B. MOORE.
S. WOODHULL.

Taken and acknowledged this 23rd day *of* May, 1850, before me,

J. W. METCALF,
As to Woodhull,
U. S. Commissioner.
G. W. M., as to Jones.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Smith Woodhull, party to the above stipulation, being duly sworn, doth depose and say, that he resides in Brooklyn, Kings County, and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

S. WOODHULL.

Sworn to, this 23d day *of* May, 1850, before me,

J. W. METCALF,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

[L. S.] The President of the United States of America, to the Marshal of the Southern District of New York, greeting:

Whereas a libel hath been filed in the District Court of the United States, for the Southern District of New York, on the twenty-third day of May, in the year of our Lord one thousand eight hundred and fifty, by Walter R. Jones, and others, in behalf of themselves, and all others interested against the cargo, materials, and furniture of the ship Richmond, or such parts thereof as may be found within this district unsold, and the proceeds of such thereof as *may* have been sold, and against all persons intervening for their interest in the same, for the reasons and causes in said libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said parts of the cargo, materials, and furniture of the said ship, within this district, and remaining unsold since their arrival here, and in the proceeds of all such as shall have been sold since the arrival of the same within this district, *may* be cited, in general and special, to answer the premises, and all proceedings being had, that the possession, &c., of the said cargo, materials, and furniture of the said ship, and the proceeds thereof, may, for the causes in the said libel mentioned, be decreed to the libellants, subject to just salvage and freight, and that the Court would fix the amount thereof, and on payment thereof, the balance of the said cargo, materials, &c., or the proceeds thereof, may be decreed in favor of the libellants.

You are therefore, hereby commanded to attach the said parts of

the cargo, materials, and furniture *of* the ship Richmond, within this district, and remaining unsold since their arrival here, and the proceeds of such as shall have been sold since the arrival of the same within this district, and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the possession of the same should not be decreed to the libellants, pursuant to the prayer of the said libel; that they be and appear before the said Court, to be held in *and* for the Southern District of New York, on the eleventh day of June next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness, the Honorable Samuel R. Betts, Judge of the said Court, at the city of New York, in the Southern District of New York, this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and fifty, and of our independence the seventy-fourth.

J. W. METCALF,
Clerk.

E. H. OWEN,
Proctor.

(Endorsed.)

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SOUTHERN DISTRICT OF NEW YORK,
United States District Court:

WALTER R. JONES and others
vs.
The Cargo, Materials, &c., of the SHIP RICHMOND, and the proceeds thereof, &c.

Monition, returnable 11th June, 1850.

E. H. OWEN,
Proctor.

Filed June 11, 1850. I hereby depute Wm. A. Brown to execute the within process. Dated 28th May, 1850.

H. F. TALLMADGE,
U. S. Marshal.

In obedience to the within monition, I attached the proceeds of the cargo, materials, &c., of the bark Richmond, herein described,

by serving copies of the within process on Messrs. Hall, Gardener & Howell, respectively, in person, in the city of New York, and also on Nathan P. Howell, Lewis Howell, Griffith Howell, Jonas Winters, and Post & Sherry, respectively, at Sag Harbor, Long Island, in person.

H. F. TALLMADGE,
U. S. Marshal.

U. S. DISTRICT COURT.

WALTER R. JONES and others
vs.
The Cargo of the SHIP RICHMOND, &c.

I hereby *consent* that the cargo, &c., above mentioned be discharged from the custody of the marshal, on the claimants, Post & Sherry, executing stipulations for costs and value, the latter in the sum of five thousand dollars, and the claimants, N. & G. Howell, executing stipulations for costs and value, the latter in the sum of six thousand dollars, they or one of each, or sureties, to justify before the commissioner in the sums for which they stipulate, and the claimants paying into Court the *costs* of the officers of the Court to the time of stipulating. I further consent, that publication of notice by the marshal be waived, provided the claimants consent to appear and answer the libel on file on or before the 25th day of June instant; and failing so to do the defaults to be entered, the bonds, stipulation for costs, and value to represent the property.

E. H. OWEN,
Proctor for Libellants.

We hereby consent to appear for the claimants, and that an *order* be entered pursuant to the terms of the above consent.

Dated June 8, 1850.

STEVENS & HOXIE.

At a special term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the city of New York, on Monday, the tenth day of June, in the year of our Lord one thousand eight hundred and fifty.

Present, the Honorable Samuel R. Betts, District Judge.

The Cargo of the brig RICHMOND, POST & SHERRY, claimants of part of cargo, and N. & G. HOWELL, claimants of residue,
ads.
WALTER R. JONES and others.

On reading and filing consents to stipulate *and* waive publication

of notice, and the terms being complied with, on motion of Messrs. Stevens & Hoxie, proctors for the several claimants, it is ordered that the goods be discharged from custody, and that the claimants have until the 25th instant to file and perfect their answer; and on like motion, it is further ordered that the bond stipulations for *value* represent the goods, and that the publication of notice by the marshal be waived.

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of New York.

Stipulation—Filed the 10th day of June, 1850.

Entered into pursuant to the rules and practice of this Court.

Whereas, a libel was filed in this Court, on the twenty-third day of May, in the year of our Lord one thousand eight hundred and fifty, by Walter R. Jones and *others*, against the cargo of the ship Richmond, for the reasons and causes in the said libel mentioned, and praying that the same may be condemned and sold to pay the adjustment and salvage, and the parties hereto hereby consenting, that in case of default or contumacy on the part of the claimants or their surety, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands;

And whereas, also, a claim is about to filed in said cause by N. &. G. Howell for part of the *cargo:*

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulator undersigned shall be and he is hereby bound in the sum of two hundred and fifty dollars, conditioned the claimants above named, shall pay all costs and expenses which shall be awarded against them by the final decree of this Court, or, *upon* an appeal, by the Appellate Court.

GILBERT HOWELL.

Taken and acknowledged this 10th day of June, 1850, before me.
GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Gilbert Howell, party to the above stipulation, being duly sworn, deposes and says, that he resides at Sag Harbor; that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

GILBERT HOWELL.

Sworn to, this 10th day of June, 1850, before *me.*
GEO. W. MORTON,
U. S. Commissioner.

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of New York.

Stipulation—Filed the 10th day of June, 1850.

Entered into pursuant to the rules and practice of this Court

Whereas, a libel was filed in this Court, on the twenty-third day of May, in the year of our Lord one thousand eight hundred and fifty, by Walter R. Jones and others, *against* part of the cargo of the ship Richmond, for the reasons and causes in the said libel mentioned, and praying that the same may be condemned to pay a reasonable salvage, and the parties hereto hereby consenting, that in case of default or contumacy on the part of the claimants or their surety, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands ;

And whereas, also, a claim and answer to be filed in said cause by Messrs. Post & Sherry for part of the *cargo :*

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulator undersigned shall be and is hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded *against* them by the final decree of this Court, or, upon an appeal, by the Appellate Court.

JNO. SHERRY.

Taken and acknowledged, this 10th day of June, 1850, before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss :*

John Sherry, party to the above stipulation, being duly sworn, deposes and says, that he resides at Sag Harbor, Suffolk County ; that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

JNO. SHERRY.

Sworn to, this 10th day of June, 1850, before me.

GEO. W. MORTON,
U. S. Commissioner.

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of New York.

In Admiralty.

Filed the 10th day of June, 1850.

Stipulation entered into pursuant to the rules and practice of this Court.

Whereas, a libel was filed on the twenty-third day of May, in the

year of *of* our Lord one thousand eight hundred fifty, by Walter R. Jones, against the cargo of the ship Richmond, for the reasons and causes in the said libel mentioned; and whereas, the part of the property claimed by the claimants has been attached, and is in the custody of the marshal, under the process issued in pursuance of the prayer of said libel, and by a consent signed by the proctor for the libellant, it has been agreed to discharge the same from custody, on stipulations in the sum of six thousand dollars, as appears from said consent now on file in said Court; and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the claimants or their surety, execution for the above amount may issue *against* their goods, chattels, and lands:

Now, therefore, the condition of this stiplaution is such, that if the stipulator undersigned, shall at any time, upon the interlocutory or final order or decree of the said District Court, or of any Appellate Court to which the above-named suit may proceed, and upon notice of such order or decree to Messrs. Stevens & Hoxie, esquires, proctors for the *claimants* of said cargo, abide by and pay the money awarded by the final decree rendered by the Court, or the Appellate Court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

GILBERT HOWELL.

Taken and acknowledged, this 10th day of June, 1850, before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Gilbert Howell, party to the above stipulation, being duly sworn, deposes and says, that he resides at Sag Harbor; that he worth the *sum* of six thousand dollars, over and above all his just debts and liabilities.

GILBERT HOWELL.

Sworn to, this 10th day of June, 1850, before me.

GEO. W. MORTON,
U. S. Commissioner.

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of New York.

In admiralty.

Filed the 10th day of June, 1850.

Stipulation entered into pursuant to the rules and practice of this Court.

Whereas, a libel was filed on the twenty-third day of May, in

the year of our Lord one thousand eight hundred and fifty, by Walter R. Jones and others, against the cargo of the ship Richmond, for the reasons and causes in the said libel mentioned; and *whereas* the part of said cargo has been attached, by process issued out of the said Court, and is now in the custody of the marshal, under the process issued in pursuance of the prayer of said libel, and by a consent signed by the proctor for the libellant, it has been agreed to discharge the same from the custody of the marshal, on stipulation in the sum of five thousand dollars, as appears from said consent, now on file in said Court; and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the part of the claimants or their surety, execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulator undersigned, shall at any time, upon the interlocutory or final order or decree of the said District Court, or of any Appellate Court to which the above-named suit may proceed, and upon notice of such order or *decree*, to Stevens & Hoxie, esquires, proctors for the claimants of said cargo, abide by and pay the money awarded by the final decree rendered by the Court, or the Appellate Court if any appeal intervene, then this stipulation to be void, otherwise to remain full force and virtue.

JNO. SHERRY.

Taken and acknowledged, this 10th day of June, 1850, before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John Sherry, party to the above stipulation, being duly sworn, deposes and says, that he resides at Sag Harbor, Suffolk County; that he is worth the sum of five thousand dollars, over and above all his just debts and liabilities. JNO. SHERRY.

Sworn to, this 10th day of June, 1850, before me.

GEO. W. MORTON,
U. S. Commissioner.

At a stated term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the city of New York, on Tuesday, the eleventh day of June, in the year of our *Lord* one thousand eight hundred and fifty. Present, the Honorable Samuel R. Betts, District Judge.

WALTER R. JONES et al.
vs.
The cargo, materials, &c., of the ship RICHMOND, and the proceeds thereof, &c.

The marshal returns on the monition, &c., that he had attached

the proceeds of the cargo, materials, &c., of the ship Richmond, by serving copies of the process upon Messrs. Hall, Gardner, & Howell, respectively, in person, in the city of New York, and also upon Nathan P. Howell, Lewis Howell, Gilbert Howell, Jonas Winters, and Post and Sherry, respectively, in person. Whereupon the claimants are called. Messrs. Stevens & Hoxie appear for the claimants, and have until 25th June inst. to file and perfect their answer, default *nisi*, and reference.

U. S. District Court,
Southern District of New York.

In Admiralty.

To the Honorable Samuel R. Betts, Judge of the District Court of of the United States, in the Southern District of New York.

The *claim* and answer of Nathan Howell and Gilbert Howell, of Sag Harbor, in said district, in behalf of themselves and Lewis Howell, owners of the ship Panama, of Sag Harbor, and all others interested in the voyage of said ship hereinafter mentioned, to the libel of Walter R. Jones and others, alleges as follows:

First. These claimants admit that the ship Richmond, in or about the month of July, in the year 1846, started from the *port* of Cold Spring, on a whaling voyage to the South and North Pacific Oceans, as is alleged in the first article of said libel, and these claimants are informed and believe, that in the course of the said voyage there was taken and secured in and on board of said vessel by her officers and crew a considerable quantity, but not a cargo, of *whale* oil, sperm oil, and whalebone, not of great value there, but which would have been of great value in any good market, and also that said ship was in the successful prosecution of her voyage until she met with the disaster in the said first article mentioned. But these claimants, on information and belief, *deny* that the said Richmond ever had nearly a full cargo on board, or had started on her return home to port, as in said article alleged.

Second. These claimants say they have no knowledge of the matters stated in the second article of said libel; that they neither admit nor deny the same, but leave the libellants to make such proof thereof as they may be advised.

Third. And these claimants say that they have no knowledge of the matters stated in the third article of said libel; that they neither admit nor deny the same, but leave the libellants to make such proof thereof as they may be advised.

Fourth. And these claimants admit, that while the said ship Richmond was so disabled, the whaling ship Panama, of Sag *Harbor*, being in the neighborhood, there were, on or about the ninth day of August, received and taken on board said ship Panama a number of barrels

of oil, and a quantity of whalebone, which had formed part of the cargo of said ship Richmond, and been prepared, manufactured, and stowed away, as in the fourth article of said libel *alleged*.

But they deny, that at the time for that purpose in said article alleged, the said ship Panama was on her return or about to return home from her whaling cruise, and they deny that the number of barrels of oil stated in the fourth article of said libel was taken on board said ship Panama, and they aver that the number of barrels of oil so taken were five hundred and eighty-four, and that the quantity of bone was three *thousand* pounds or thereabouts.

Fifth. And these claimants allege, on information and belief, that while the said ship Panama was pursuing the business of whaling, and actively and actually engaged therein, and successfully prosecuting the same in or near Behring's Straits, on or about the 7th day of August, A. D. 1849, a vessel was discovered by the persons on board of said ship to have grounded on the west side of Behring's Straits; that shortly after such discovery a boat was seen approaching said ship Panama, from which boat the first mate of the ship Richmond came on board said ship Panama, and communicated to the masters and officers thereof the intelligence that said grounded vessel was the Richmond, that she had struck *upon* the ground or rocks in a thick fog while actually engaged in boiling out oil; that she had bilged and filled with water; that her officers and crew had abandoned her, and had gone upon a barren, uninhabited shore near by; that she would probably be broken up, and, with her cargo, totally destroyed upon the first occurrence of rough weather; and that the master and officers of said ship *Richmond*, had determined to sell the said ship, her furniture, &c., and her cargo at public auction, for the benefit of the owners thereof, and and all others interested, as the only means of saving anything from the said ship, furniture, and cargo, for the owners thereof, and those interested therein. The said mate further informed the master and officers of said ship Panama, that the said sale *would* take place the next day, and solicited said master of the Panama to attend and purchase such portion of the cargo of said Richmond as he might wish, and as would be sufficient to fill his said ship.

Sixth. That on the day following the occurrence mentioned in the preceding article, the master of said ship Panama repaired on board said ship Richmond, and, upon examination, found that the *said* ship was on a bed of rocks, wholly disabled, full of water, and situated as the said mate had stated; and that on said day and on board of said ship Richmond, pursuant to a notice to that effect theretofore published, and the information so communicated to the master of said ship Panama, as hereinbefore stated, a sale at public aution was made of said ship Richmond, her *furniture*, and of so much of her cargo as was desired by the persons present at said sale, by and under the direction of the master and officers of the said ship Richmond, acting for the owners thereof, and all others

interested, at which sale the master of the said ship Panama being present, did bid off and purchase for and on behalf of the owners of said ship *Panama*, five hundred and eighty-four barrels of oil, containing about eighteen thousand gallons, and about three thousand pounds of bone, at and for the price of seventy-five cents per barrel of oil, that being the highest sum bid therefor, and that the said amount of bone was sold and taken as a proper proportion to go with said oil, according to the terms and conditions of *said* sale.

Seventh. And these claimants admit that the said ship Panama has safely arrived at the port of New York with the said part of the cargo of said ship Richmond, so purchased by the master of the said Panama, on board. But they deny that the same were of the value stated in the fifth article of said libel, and they aver that the value thereof was not more than eight *thousand* seven hundred dollars; and they admit that no proceedings have been taken on the part of the master or owners of said ship Panama towards adjusting or fixing any amount of salvage or freight as due thereon; and they admit and say, that the agents of the said ship Panama have sold such part as aforesaid of the said cargo of the ship *Richmond*, and that the proceeds thereof have come to the the hands of the owners of said Panama, and are eight thousand six hundred and eighty-five dollars, and no more, which sales were made and proceeds distributed among the persons interested in the voyage of the said ship Panama, with the full knowledge of the said libellants, and without any dissent or objection on their *part*.

Eighth. And these claimants deny, that the owners or agents of said ship Panama, or any person acting for them or on their behalf, have been or are setting up a pretended sale of such portion of said cargo to the master of the said ship Panama, as is stated in the fifth article of said libel; and these claimants aver that they have claimed and do now claim that they held said part of said cargo as *their* own, by virtue of the purchase thereof by the master of said ship Panama at said sale in Behring's Straits, as hereinbefore stated, and that sale was, in every respect, a fair, honest, and valid sale of said property, made from necessity in good faith, and for the best interests of the owners of said ship Richmond and others *interested*, and that these claimants became thereby the rightful and *bona fide* owners of the portion of said cargo so purchased by their master as aforesaid. And, on information and belief, they further say, that the said master, officers, and company of the said Richmond were interested as part owners or otherwise in her said cargo, and that each and every of them did assent to, acquiesce in, and authorize such sale thereof; and that the *said* master of said Richmond had full power and authority from the said libellants and all persons interested in said cargo to sell and dispose of the same cargo and every part thereof, at the time and in the manner in which said sale took place.

Ninth. And these claimants, on information and belief, say, that when said sale was determined upon and made, the said Richmond was wholly disabled from *prosecuting* her voyage, and irrevocably wrecked and lost; that there were no inhabitants or persons in that part of the globe, or within reach of her officers and company, from whom any relief could have been had for said Richmond or her cargo, or to whom herself, her furniture, or cargo, or any part thereof, could have been sold, except the persons who were present *and* purchased at said sale, nor any persons who ought to or would accept to carry on freight, or take in charge or secure for a salvage, compensation, or otherwise, on behalf of her owners, the said Richmond, her tackle, apparel, furniture, cargo, or any part of the same. That the season during which it was practicable for vessels to remain there was drawing nigh to its close; that it was unsafe and improper for any of her company to remain with *her*, as their lives would certainly be lost thereby; and immediately upon the close of said season, if not before, her entire physical destruction, and that of her whole cargo, was inevitable from the action of the winds and waves. And they further, in like manner, say, that, in order to receive said portion of said cargo on board of said Panama, her master and company *were* obliged to desist from a successful pursuit of the whaling business, in which they were then engaged, and by which soon, at small expense, they would have filled up their said ship with good oil, and to incur great toil, labor, and expense, and were also obliged to cast overboard and destroy between four and five hundred barrels in shooks of the value of *five* hundred dollars or thereabouts.

By means of all which premises these claimants insist, that if a salvage compensation only shall be awarded to them for their claim and interest in this behalf, such compensation should be allowed to the whole extent of the proceeds aforesaid.

Tenth. And these claimants admit that the libellants, at the time of the *obtaining* of said cargo, were the owners of the said ship Richmond, her tackle, apparel, and furniture, as is stated in the sixth article of said libel, but they deny that at the time of the receipt of the said cargo, or portions thereof, on board the other vessels, as stated in said sixth article, the libellants were the owners of the said ship Richmond, her tackle, apparel and *furniture*, or that they became or are entitled to the ownership, possession, control and disposition of the said cargo so sold as aforesaid, and the proceeds thereof, and especially to that portion thereof so purchased by the master of the ship Panama, as hereinbefore stated.

And these claimants aver that by the said sale so necessarily, properly, and lawfully *made*, as hereinbefore stated, the libellants were divested of any and all rights of ownership, possession or control of the said last-mentioned portion of said cargo, and the same thereupon immediately became and was, and the proceeds thereof now are, the property of these claimants, and these claimants deny any

and all *knowledge* of the other matters alleged in the said sixth article of said libel, and neither admit nor deny the same, but leave the libellants to make such proof thereof as they may be advised.

Eleventh. And these claimants deny, that all and singular the premises alleged in said libel are true, and they pray that as to these claimants the said libel may be dismissed with costs.

GILBERT HOWELL.
STEVENS & HOXIE,
Proctors.
NATHL. B. HOXIE,
Advocate.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Be it remembered, that on this 28th day of August, 1850, before me, at the City Hall, in the city of New York, personally appeared the within-named Gilbert Howell, and made oath that he had read the foregoing claim and answer, subscribed by him, and knew the contents thereof, and that the same are true of his *own* knowledge, except as to the matters stated on information and belief, and as to those matters he believes it to be true.

GEO. W. MORTON,
U. S. Comm.

Filed Aug. 28, 1850.

U. S. DISTRICT COURT.

WALTER R. JONES, &c.,
vs.
Part of Cargo of SHIP RICHMOND, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Gideon Tucker, of said district, a clerk in the office of E. H. Owen, proctor for the libellants in this cause, being duly sworn, says, that *on* the 31st day of August last, he served copies of the within notice and interrogatories on a person in and having charge of the office of Messrs. Stevens & Hoxie, proctors for the owners of the ship Panama, &c.

GIDEON TUCKER.

Sworn to before me, this 6th day of September, 1850.

GEO. W. MORTON,
U. S. Comm.

Gent: The interrogatories of which within are copies, will be

deemed assented to, so as not to require an allowance, unless notice of your objections thereto be received *within* 4 days.

New York, 31st Aug., 1850.

E. H. OWEN,
Libellants' Proctor.

To Messrs. STEPHENS & HOXIE,
Claimants' Proctor.

U. S. DISTRICT COURT.

WALTER R. JONES and others
vs.
Part of the Cargo of the SHIP RICHMOND. NATHAN HOWELL and GILBERT HOWELL, Claimants.

Interrogatories proposed by the *libellants* to the above-named claimants, pursuant to the 99th rule of this Court.

First. When did the ship Panama arrive at the port of New York, with the part of the cargo of the Richmond on board of her, referred to in your answer?

Second. Was the oil and bone which she brought in, or any, and what part of it, on taking it out of her, found to have been *kept* separate or distinct, so that the oil and bone (or any and what part of it) which had been part of the cargo of the Richmond was distinguishable from that which had been taken by the crew of the Panama; if so, how far was it so, and by what marks, and in what manner particularly was it distinguishable? Were any of the casks which had come from the Richmond capable of *being* distinguished from those which had belonged to the Panama; if so, how in particular; and were they or not kept distinct and separately sold?

Third. By whom and to whom was each parcel of the oil and of the bone which came from the Richmond sold; when and at what prices; did you attend personally to the guaging and weighing of the same, and to the sale and delivery thereof, or *any* and what part thereof; who else attended to either; who was the official guager, weigher, or inspector; what were the whole gross proceeds of the oil and what of the bone?

Fourth. If, in order to answer the last interrogatory, you cannot from your personal knowledge distinguish all those parts of the cargo which came from the Richmond from the catchings of the Panama, *then* please state by whom and to whom the whole cargo brought into the port of New York by the Panama was sold; when and at what prices for each parcel of oil and bone, and who attended to the guaging and weighing of the same, and to the unloading and delivery of each parcel of the same; what were the whole gross proceeds of all the oil of each kind, and what of all the bone?

Fifth. Has any *part* of the price stated in your answer to have been bid by the master of the Panama, for oil and bone taken from the Richmond, been paid to the libellants, or any of them, or to any one on their behalf; if so, by whom, to whom in particular, when and where?

Sixth. Had the master of the Panama any authority from his owners to purchase oil or bone to make up his cargo; if so, when *and* in what terms was it given; did he make any contract in writing to purchase the cargo in question to your knowledge; if so, what became of it, and in what terms was it expressed; did he, on arrival, claim or disclaim having made any such purchase on his individual account; did you ever inform the libellant, or either of them, that you confirmed or adopted his purchase as your own; if so, to whom and when for the first time, in what terms, where and *how* in particular?

E. H. OWEN,
Att'y for Libellants.
CHAS. B. MOORE,
Advocate.

Filed Sep. 6, 1852.

UNITED STATES DISTRICT COURT,
Southern District of New York.

In Admiralty.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States, in the Southern District of New York.

The claim and answer of William R. Post and John Sherry, of Sag Harbor, in said District, in behalf of themselves and Charles Smith, Jeordiah *Conklin*, Jonas Winters, Benjamin Babcock, Wm. Cooper, Robert Spier, jr., H. H. Monsall, Isaac Moses, Samuel C. Davis, Henry Grinnell, Moses H. Grinnell, Robert B. Minturn, Wm. H. Demilt, John Bliss, Frederick Cleighton, and Charles H. Judson, owners of the bark Elizabeth Frith, of Sag Harbor, and all others interested in the vogage of said barque hereinafter *mentioned*, to the libel of Walter R. Jones and others, allege as follows:

First. These claimants admit, that the ship Richmond, in or about the month of July, in the year 1846, started from the port of Cold Spring, on a whaling voyage to the South and North Pacific Oceans, as is alleged in the first article of said libel, and these claimants are informed and believe, that in the course of the said voyage there was taken *and* secured, in and on board of said vessel, by her officers and crew, a considerable quantity, but not a cargo, of whale oil, sperm oil, and whale-bone, not of great value there, but which would have been of great value in any good market, and also that said ship was in the successful prosecution of her

voyage until she met with the disaster in the said first article mentioned. But these claimants, *on* information and belief, deny that the said Richmond ever had a full cargo on board, or had started on her return home to port, as in said article alleged.

Second. And these claimants admit, that while the said ship Richmond was so disabled and on shore, there were, on or about the eighth day of August, 1849, received and taken on board of said bark Elizabeth Frith, a number of barrels of whale *oil*, and a quantity of whale-bone, which had formed a part of the cargo of the said ship Richmond, and had been prepared, manufactured, and stowed away, as in the second article of said libel alleged. But these claimants allege that there were three hundred barrels of oil and three thousand pounds of bone received and taken on board said bark previous to said eighth day *of* August, and before the sale of the cargo, &c., of said Richmond, hereinafter mentioned, and that they were so temporarily received and taken on board said barque at the earnest solicitation of the captain and officers of the said ship Richmond, for temporary safety, the said ship Richmond being in *imminent* danger of being immediately destroyed and totally lost; and that about three hundred barrels of oil and three thousand pounds of bone were received and taken on board of said barque Elizabeth Frith, after said sale, the whole of said oil and bone so received and taken, as herein stated, having been purchased at said sale, as hereinafter mentioned; and these claimants deny, that there were also received *and* taken on board said barque any chronometers, medicine-chests, compasses, or other articles forming part of the furniture and materials of said ship Richmond, as is alleged in said second article of said libel; but the master of said Richmond took passage home from the place of said disaster, on board said barque, and brought on board with him two chronometers, one barometer, three compasses, and one medicine-chest, the *last* of which articles was taken possession of by the American Consul at Honolula, in the Sandwich Islands, where said barque first touched, after the death of said master, on her homeward passage, and the residue of such articles remain in the hands of these claimants for the true owners, whoever they may be.

Third. That, as these claimants have been informed and believe, on or about the fifth day of August, A. D. 1849, the said *ship* Richmond was discovered by the officers and crew of the said bark Elizabeth Frith, to be cast away and grounded on the west side of Behring's Straits, in a very dangerous and precarious situation, and in imminent danger of being broken up and totally destroyed, together with the cargo then on board, upon the happening of any tempestuous weather; that the second mate of said ship Richmond, on said day, came on *board* bark Elizabeth Frith and first communicated to the master of the latter vessel the intelligence that the said ship Richmond had grounded in a fog and had bilged. That said ship Richmond and the cargo of oil and bone on board were in

imminent danger of being destroyed and totally lost, and that her officers and crew had abandoned her and gone on shore; that shortly after the master *and* first mate of said ship Richmond came on board of said bark Elizabeth Frith, and repeated the statements made by the second mate as above stated, and added that the said ship Richmond was full of water, and that the place where she was on shore was rocky, and of such a nature as to render it impossible to land the oil and bone composing her cargo. That they had cut away the mizen-mast and staved *in* about two hundred barrels of oil on her deck for the purpose of easing the vessel. That the said master and mates of said Richmond requested and urgently solicited the master of the bark Elizabeth Frith to take from said ship Richmond, a sufficient number of barrels of oil to fill his vessel, she then needing about six hundred barrels for that purpose; and that they were ready and willing to assist him in so *doing*, they further stating that the said oil was of no use to them, and would, in all probability, be destroyed and totally lost. That the master of said bark Elizabeth Frith declined and refused to take said oil, as at that time said bark was successfully engaged in whaling, large numbers of whales of large size and remarkably gentle being and continuing in sight, and the facilities for obtaining sufficient oil to fill the said bark in a *very* short space of time being unusually great. That the master and mates of the said ship Richmond then urgently solicited the master of said bark Elizabeth Frith to take and receive on board of his bark, for temporary safety, a portion of said oil and bone, and keep the same until a sale could be had of said ship Richmond, her furniture, cargo, &c., which they, the officers of said ship Richmond, contemplated making in a short time; that the master of said bark, after much solicitation, *acceded* to said request, and took and received on board said bark nearly three hundred barrels of oil and three thousand pounds of bone, for the temporary safety and preservation thereof until such sale, and there kept the same until the eighth day of August, 1849, when the same were sold and disposed of as hereinafter stated.

Fourth. That, as these claimants are informed *and* believe, on the eighth day of August, A. D. 1849, public notice thereof having been twenty-four hours previously given to all persons in the vicinity, a sale at public auction was made of the said ship Richmond, her furniture, and of so much of her cargo as was desired by the persons present at said sale, by and under the direction of the master and officers of the said ship Richmond, acting for the owners thereof, and all others interested, *at* which sale the master of the said bark Elizabeth Frith being present, did bid off and purchase for and in behalf of the owners of said bark about six hundred barrels of oil, containing eighteen thousand eight hundred and sixty-eight gallons, and six thousand pound of bone, a portion thereof being on board said bark Elizabeth Frith, as hereinbefore stated, at and for the price of one dollar per barrel of oil, that be-

ing the highest sum bid *therefor*, and that the said amount of bone was sold and taken as a proper proportion to go with said oil according to the terms and conditions of said sale.

Fifth. And these claimants admit, that the said bark Elizabeth Frith has safely arrived at the port of Sag Harbor, with the said part of the cargo of the said ship Richmond, as is stated in the third article of said libel, and they admit *the* value of said part of the cargo to be upwards of nine thousand five hundred dollars, and they aver that the value thereof, at the present market price, is ten thousand six hundred dollars or thereabouts. And these claimants admit, that no proceedings have been taken by or on the part of the master or owners of said bark toward adjusting or fixing any amount of salvage or freight as due thereon, and they admit *that* it is their intention to sell and dispose of the said part of said cargo in the ordinary course of their business.

Sixth. And these claimants deny, that the agent and owners of said bark, or any of them, have unjustly set up a pretended sale of said portion of said cargo, as is alleged in said third article of said libel; and these claimants say, that they have claimed and do now claim to own the said part of said *cargo* by virtue of the purchase thereof by the master of said bark at said sale in Behring's Straits, as hereinbefore stated, and that said sale was in every respect a fair, honest, and valid sale of said property, made from necessity, in good faith, and for the best interests of the owners of said ship Richmond, and others interested, and that these claimants became *thereby* the rightful and bona fide owners of the portion of said cargo so purchased by their master as aforesaid; and on information and belief, they further say, that the said master, officers, and company of the said Richmond, were interested as part owners or otherwise, in her said cargo, and that each and every of them did assent to, acquiesce in, and authorized such sale thereof, and that the said *master* of said Richmond had full power and authority from the said libellants, and all persons interested in said cargo, to sell and dispose of the same cargo and every part thereof at the time and in the manner in which said sale took place. And these claimants deny, that said sale was for a merely nominal price, and they aver, that the sum for which the same was struck *off* to the master of said bark, was, under the circumstances, a fair and full price therefor; and these claimants admit, that the amount of said purchase has not been paid to the owners of said ship Richmond, and they allege the reason therefor to be as follows, that is to say: The owners of said ship Richmond were, before the intelligence of such sale reached these claimants, ever since have been and still are, largely indebted *to* these claimants for other and different transactions, and these claimants have at all times been and still are willing and prepared to take and state an account with the said owners of said ship Richmond of and concerning all the transactions out of which any indebtedness arose on their part, and on the part of

the claimants, including the sale hereinbefore mentioned, and finally settle and liquidate the same, and pay any and all sums that might be found to be due from these claimants to said owners; that these claimants have informed the libellants that they held such accounts, and should present the same as an offset in the settlement of all such transactions which they have hitherto refused to admit.

Seventh. And these claimants, on information and belief, say, that when said sale was determined upon and made, the said Richmond was wholly disabled from *prosecuting* her voyage, and irrevocably wrecked and lost; that there were no inhabitants in that part of the globe, or within reach of her officers and company, from whom any relief could have been had for said Richmond or her cargo, or to whom herself, her furniture, or cargo, or any part thereof, could have been sold, except the persons who were present and purchased at said sale, nor any person *who* ought, or would accept to carry on freight, or take in charge, or secure for a salvage, compensation, or otherwise, in behalf of her owners, the said Richmond, her tackle, apparel, furniture, cargo, or any part of the same; that the season during which it was practicable for vessels to remain there was drawing nigh to its close; that it was unsafe and improper for any of her company *to* remain with her, as their lives would certainly be lost thereby, and immediately upon the close of said season, if not before, her entire physical destruction, and that of her whole cargo, was inevitable, from the action of the winds and waves.

And they further, in like manner, say, that in order to receive said portion of said cargo on board of said barque Elizabeth Frith, her master and company were obliged to *desist* from a successful pursuit of the whaling business in which they were then engaged, and by which soon, and at small expense, they would have filled up the said barque with good oil, and were obliged to incur great toil, labor, and expense, and were also obliged to cast overboard and destroy about six hundred barrels in shooks, sixteen hundred pounds of bread, and other articles of the value of eight hundred dollars and upwards, by *means* of all which premises these claimants insist, that if a salvage compensation only shall be awarded to them for their claim and interest in this behalf, such compensation should be allowed to the whole extent and value of said portion of said cargo.

Eighth. And these claimants say, that they have no knowledge as to the matters stated in the fourth article of said libel; *that* they neither admit nor deny the same, but leave the libellants to make proof thereof as they may be advised.

Ninth. And these claimants say, that they have no knowledge of the matters stated in the fifth article of said libel; that they neither admit nor deny the same, but leave the libellants to make such proof thereof as they *may* be advised.

Tenth And these claimants admit, that the libellants, at the time

of the obtaining of said cargo, were the owners of said ship Richmond, her tackle, apparel, and furniture, as is stated in the sixth article of said libel, but they deny that at the time of the receipt of the said cargo, or *portion* thereof, on board the other vessels, as stated in said sixth article, the libellants were the owners of the said ship Richmond, her tackle, apparel, and furniture, or that they became or are entitled to the ownership, possession, control, and disposition of the said cargo, so sold as aforesaid, and the proceeds thereof, and especially to that portion thereof so purchased *by* the master of the bark Elizabeth Frith, as hereinbefore stated. And these claimants aver, that by the sale so necessarily, properly, and lawfully made, as hereinbefore stated, the libellants were divested of any and all rights of ownership, possession, or control of the said last-mentioned portion of said cargo, and the same thereupon immediately became and was, *and* still is, the property of these claimants. And these claimants deny any and all knowledge of the other matters alleged in the said sixth article of said libel, neither admit nor deny the same, but leave the libellants to make such proof as they may be advised.

Eleventh. And these claimants deny, that all and singular the premises *alleged* in said libel are true; and they pray that as to these claimants, the said libel may be dismissed with costs.

WM. R. POST.
STEVENS & HOXIE, *Proctors.*
N. B. HOXIE, *Advocate.*

SOUTHERN DISTRICT OF NEW YORK,
Suffolk County, ss.

Be it remembered, that on this fourth day of September, A. D. 1850, *before* me, personally appeared Wm. R. Post, one of the claimants above-named, who, being by me duly sworn, deposed: that he has read the foregoing libel by him subscribed, and knew the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief; and as to those matters, he believes *it* to be true.

B. F. HUTCHINSON, *Clerk.*

Filed Sept. 11, 1852.

U. S. DISTRICT COURT.

Part of the cargo of the ship Richmond, NATHAN HOWELL & GILBERT HOWELL, claimants,
ads.
WALTER R. JONES and others.

Answer to interrogatories proposed by the libellants to the above-named claimants.

First. To the first interrogatory these claimants answer, *that*

the ship Panama arrived at the port of New York on the twelfth or thirteenth day of March, A. D. 1850, but on which of those days these claimants cannot now remember.

Second. To the second interrogatory these claimants answer, that the oil and bone brought in by her was not found to have been kept separately or distinct, so that the oil and bone which had formed part of the cargo of the Richmond was distinguishable from that which had been taken by the crew of the Panama, and *none* of the casks which had come from the Richmond were capable of being distinguished by these claimants from those which had belonged to the Panama, and they were not kept distinct, and were not separately sold.

Third. To the third interrogatory these claimants answer, that they cannot, from personal knowledge, distinguish any part of the cargo which came from the Richmond from the catchings of the Panama, and cannot, therefore, answer specifically as to the matters propounded in relation thereto in said third interrogatory. And they refer to their answer to the fourth interrogatory for *all* the particulars relative thereto in their power to give.

Fourth. To the fourth interrogatory these claimants answer, that the whole cargo brought into the port of New York by the Panama was sold by Slate, Gardiner & Co., of the city of New York, on account of the owners of said ship; that Richard Ellison attended officially to the guaging and weighing of the same; and that they know not who attended to the *unloading* and delivery of each parcel of the same, but presume said Slate, Gardiner & Co., or some person or persons in their employ, did so attend; and that Gilbert Howell, one of these claimants, was present during most of the time that the same was sold, but was not actively engaged therein; that the whole gross proceeds of all the oil so sold was forty-eight thousand and four hundred and ninety-two dollars and eight cents, and the whole net proceeds of said oil was forty-six thousand *five* hundred and ninety-six dollars and seventy-nine cents; and that the whole gross proceeds of all the bone sold was ten thousand four hundred and seventy-six dollars and forty-one cents; and the whole net proceeds of said bone was ten thousand one hundred and seventy-three dollars and fourteen cents; and that the following are copies of the account of sales of the whole of said cargo, as rendered by said Slate, Gardiner & Co., and which claimants believe to be just and true, and to which these claimants refer, as full and particular answers to *all* the matters propounded in said fourth interrogatory:

Sales of 781 casks whale oil, per account of owners ship Panama.

1850.										
Mar. 26,	Syles & Polhamus,	103	15,787	863	14,924	45c.	Cash	18 Apr.	6,715	80
"	do.	11	2,146	86	2,060	43c.	"	" "	885	80
"	J. Judd, Sons & Co.,	162	23,735	1,032	22,703	45c.	4 mos.	5 Aug.	10,216	35
			Add interest,						204	33

1850.										
Mar. 27,	G. S. Gilbert	18	3,058	106	2,952	46c.	Cash	11	Apr.	1,357 92
"	Brower & Decker,	12	2,459	141	2,318	45c.	"	9	"	1,043 10
"	do.	4	842	27	815	43c.	"	"	"	350 45
"	Faber & Bainwith,	22	3,370½	130	3,240½	45c.	"	10	"	1,458 23
30,	S. Crawford,	3	564	18	546	43c.	"	12	"	234 78
"	Handers & Wright,	2	344	14	330	45c.	"	7	"	148 50
"	Henry Butler,	7	1,191	61	1,130	43c.	"	8	"	485 90
Apr. 1,	P. A. & S. Small,	11	889	44	845	45c.	"	12	"	380 25
"	E. Ellsworth,	11	1,741	85	1,656	43c.	"	16	"	712 08
2,	J. H. Stevens,	1	173	10	163	46c.	"	10	"	74 98
"	J. W. Schmidt & Co.,	30	4,966	224	4,742	42½c.	"	"	"	2,003 49
"	Grin'll, Minturn & Co.	108	16,500	736	15,764	42½c.	"	"	"	6,660 29
"	E. W. VanVoorhes&Co.	12	1,589	101	1,488	42½c.	"	12	"	632 40
"	Syles & Polhamus,	4	847	28	819	43½c.	"	13	"	352 17
5,	E. W. Van Voorhes,	11	2,409	79	2,330	43½c.	"	16	"	1,001 90
"	W. F. Hatch,	21	3,435	132	3,303	45c.	"	18	"	1,486 35
"	Haveland, Keen&Co.	5	145	8½	1,362	47c.	"	"	"	64 16
9,	do. "Bluck,"	5	163½	7½	156	43c.	"	"	"	67 08
"	Forsyth & Robinson,	8	888	67	821	43c.	"	"	"	353 03
11,	R. W. Burlage,	25	4,377	164	4,213	42c.	"	20	"	1,769 46
"	Beck & Cunhardt,	25	4,640	150	4,490	42c.	"	"	"	1,885 80
12	Israel Minor & Co.,	2	321	8	313	43c.	"	"	"	134 59
Mar. 29,	A. Woodhull,	14	3,121	107	3,014	43c.	"	9	"	1,296 02
Apr. 16,	Clavenstadt&Schum'k	68	11,035	348	10,675	42½c.	"	25	"	4,545 38
"	James R. Sparrow,	6	385	25	360	43c.	"	1	May	154 80
17	Syles & Polhamus,	9	1,690	60	1,630	43c.	"	"	"	700 90
20	James R. Sparrow,	4	286	12	274	43c.	"	"	"	117 82
22	Rumsey & Todd,	3	535	15	520	43c.	"	27	Apr.	223 60
"	James R. Sparrow,	15	777	51½	725½	43c.	"	1	May	311 97
"	N. & G. Howell,	38	1,169	81	1,088	42½c.	"	1	"	462 40
										$48,492 08

Charges.

Gauging	$95 34	
Cartage and lighterage	139 41	
Coopering $9 87, labor $14 75	24 12	
Storage $3,62, advertising $10	13 62	
Commission 2½ per cent. $48,492 08	1,212 30	
Guarantee commission 2½ per cent. on $10,420 68	260 50	
Labor and coopering	150 00	
		1,895 29
Net proceeds, average due 12 May, 1850		$46,596 79

E. E. SLATE, GARDINER & CO.

New York, April 29, 1850.

Sales of 299 bundles whalebone for account of owners of ship Panama.

1850.								
Apr. 2,	Solomon & Swart, Polar,	25	3,354 lbs.	34c.	Cash	10	Apr.	1,140 36
" 9,	E. Bossage, R. W.,	115	12,047 "	31c.	"	20	"	3,734 57
" 17,	P. Schmidt & Andrews, Js,	68	5,410 "	31c.	"	25	"	1,677 10
" 25,	E. Velleran, Polar,	95	11,814 "	33c.	"	1	May	3,898 62
" "	Do., damaged,	1	92 "	28c.	"	1	"	25 75
								$10,476 41

Charges.

Cartage	$8 00	
Weighing	16 36	
Labor	6 00	
Storage	9 00	
Advertising	2 00	
Commission 2½ on $10,476 41	261 91	
		$303 27
		$10,173 14

SLATE, GARDINER & CO.

New York, April 29th, 1850.

Fifth. To the fifth interrogatory these claimants answer, that no part of the price stated in their answer to have been bid by the master of the Panama for oil and bone taken from the Richmond has been paid to the libellants or any of them.

Sixth. To the sixth interrogatory these claimants answer, that the master of the Panama had a verbal authority to get a cargo of oil and bone whenever and wherever the same could be obtained, in the best manner and on the best terms. That he had no other special authority to purchase oil and bone to make up his cargo. That he did not make any contract in writing to purchase the cargo in question to their knowledge. That he, on his arrival, disclaimed having *made* any such purchase on his individual account. That Gilbert Howell, one of the claimants, informed Walter R. Jones, one of the libellants, some time after the arrival of said Panama, that these claimants were ready to pay the amount of said purchase when called upon, and also stated in substance the same to one of the firm of A. & S. Willets, also libellants, at or about the same time.

GILBERT HOWELL.
STEVENS & HOXIE, *Proctors.*
NATHANIEL B. HOXIE, *Advocate.*

U. STATES OF AMERICA,
Southern District of New York, ss.

Be it remembered, that on this eighteenth day of September, A. D. 1850, personally appeared before me, at the City Hall, in the city of New York, the within named Gilbert Howell, and made oath that he had read the foregoing answers to the interrogatories subscribed by him, and knows the *contents* thereof, and that the same are true of his own knowledge, except as to the matters therein stated on his information and belief; and as to those matters, that he believes it to be true.

GEO. W. MORTON,
U. S. Comm.

Filed Sept. 18, 1850.

U. S. DISTRICT COURT,
Southern District of New York.

In Admiralty.

To the Honorable Samuel R. Betts, Judge of the District *Court* of the United States, in the Southern District of New York.

The replication of Walter R. Jones and others, libellants to the claim and answer of William R. Post and John Sherry, respondents.

These repliants, saving and reserving to themselves all and all manner of benefit and advantage of exception *which* may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, say that they will aver, maintain, and prove their libel to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said claimants is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained, material or *effectual* in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove, as this honorable Court shall direct, and humbly pray, as in and by their said libel they have already prayed.

E. H. OWEN,
Libellants' Proctor.

Filed Sept. 27th, 1850.

A replication also filed on the same day to answer of Howell.

U. S. DISTRICT COURT.

WALTER R. JONES and others
vs.
The cargo, materials, &c., of the SHIP RICHMOND, or their proceeds, N. & G. HOWELL, claimants, and POST & SHERRY, claimants.

I consent that Moore and McDaniel be substituted as proctors for the libellants in this case, and that an order be entered for that purpose.

New York, 5th May, 1851.

E. H. OWEN.

Filed May 7th, 1851.

At a stated term of the District Court of the United States of America, for the Southern District of New York, held at the

City Hall, in the city of New York, on Tuesday, the sixth day of May, in the year of our Lord one thousand eight hundred and fifty-one:

Present, the Honorable Samuel R. Betts, District Judge,

WALTER R. JONES and others, Libellants,
vs.
The CARGO, MATERIALS, &c., of the SHIP RICHMOND, &c.,

On reading and filing a consent in writing, signed by E. H. Owen, proctor for the libellant herein, and on motion of Moore and McDaniels, it is ordered that the said Moore and McDaniels be, and they are hereby, substituted as proctors for the libellants in the place and stead of E. H. *Owen*.

At a stated term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the city of New York, on the third day of June, in the year of our Lord one thousand eight hundred and fifty-two:

Present, the Honorable Andrew T. Judson, District Judge,

WALTER R. JONES and others
vs.
The CARGO, &c., of the SHIP RICHMOND, N. G. HOWELL and POST & SHERRY, claimants,

This cause being called in its order on the calendar, ordered hearing.

The following depositions were produced and read on the hearing of the cause, on the part of the libellants and claimants:

U. S. DISTRICT COURT,
Southern District of New York:

WALTER R. JONES and others
vs.
The CARGO, &c., of the SHIP RICHMOND, N. & G. HOWELL and POST & SHERRY, *claimants.*

It is hereby stipulated and agreed, by and between the proctors for the respective parties in this cause, that Charles H. Reeves be examined as a witness, de bene esse, in said cause, on the part of

the libellants, at the office of W. H. H. Moore, esq., No. 104 Wall street, on the 17th day of September instant, at 11 o'clock in the forenoon, that such deposition, so to be taken, after being sworn to before a Commissioner of Deeds, or *other* officer authorized to administer oaths for the State of New York, or before a U. S. Commissioner, may be read in evidence on the trial or hearing of this cause, with like effect, subject to all legal objections, as if the same had regularly been taken before a magistrate or officer of this Court, upon an order and notice, &c., and that the same need not be filed, but may remain in the possession of the libellants' *proctor*, a copy thereof to be served on the claimants' proctor within ten days after such deposition shall be sworn to.

New York, 17th September, 1850.

STEVENS & HOXIE,
Claimants' Proctor.

(Exhibit referred to in annexed deposition,) marked A, C. B. M.—N. B. H.

Notifycashion. This is to *sertify* that the ship Richmond and cargo is to be sold at publick *ockshion* to the *hiest* bidder, without *resurve*, August 8th, 1849.

U. S. DISTRICT COURT,
Southern District of New York.

WALTER R. JONES and others
vs.
The CARGO, &c., of the SHIP RICHMOND, N. & G. HOWELL and POST & SHERRY, Claimants.

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

Charles H. Reeve, a witness produced, sworn, and examined on the part of the libellants above named, testifies as follows: 17th September, 1850.

I reside at Sag Harbor, L. I.; am a *seafaring* man; I expect to go to sea soon—between the first and sixth of October next—on a whaling voyage to the North Pacific Ocean, as first officer of the ship Trident, of New Bedford; I was first officer of the ship Richmond, of Cold Spring; I joined her at Oahu, in the Sandwich Islands, in October, 1848; I think she was 447 tons; we went from the Sandwich Islands to whale first in the Japan Sea; when we started from the Sandwich *Islands*, we had between 14 and 1500 barrels of oil, as the captain told me; in the Japan Sea we got four whales; we left that sea in company with the Elizabeth Frith

and Washington, both of Sag Harbor, from the Straits, where we got out of that sea into the ocean; the latitude of these Straits was 40 degrees and 50 minutes north, where we was at 12 o'clock on the 8th day of May, 1849; we saw the Elizabeth Frith after that time every day until we took our first *whale*, which was on the 5th of June, in latitude 55 degrees 18 minutes north; we took other whales after this on different days, and in different latitudes, which I can state by reference to the log-book kept by me.

Witness states the same as follows:

One on 17th June, about lat. 63 deg. 31 m. N.
One on 30th June, about lat. 63 deg. 30 m. N.
One on 2nd July, about lat. 63 deg. 50 m. N.
One on 5th *July*, about lat. 63 deg. 50 m. N.
One on 6th *July*, about lat. 63 deg. 53 m. N.
One on 10th July, about lat. 63 deg. 36 m. N.
One on 25th July, about lat. 65 deg. N.
(This was picked up dead.)
One on 26th July, about lat. 65 deg. 23 m. N.
One on 29th July, about lat. 65 deg. 20 m. N.

This is the last one we caught; we caught 14 head of whale after I joined the ship, and got them on board.

Including what the captain told me he had before I joined the ship, according to my best judgment, we had on *board*, on the second day of August, 1849, 3,900 barrels of oil.

We had about 26,000 pounds of whalebone on board, caught after I came on board; 7 heads of whalebone had been cleaned and put away, not tied up; the other 7 heads had been split up into three slabs of whalebone, each slab and put together with the gum on.

When I speak of 26,000 pounds, I mean that the 14 head of whale would *produce* that quantity when cleaned and dried; the heads taken at the northward averaged from 2,400 to 2,500 pounds each.

Those taken further to the southward, in the Japan Sea, averaged from 1,500 to 1,700 pounds; I had some experience in the Superior, Captain Royce, with whom we got 14 heads of whales, one weighing 2,600 pounds; the whole 14 heads produced, dry, 26,000 pounds, which Capt. Roys sent *home;* the 14, taken together, that we had with Capt. Roys, were about the same, as to size, as those we took on board the Richmond.

Bone stows in a vessel better than oil compared with its value; the Richmond would carry about 800 barrels of oil between her decks; she could carry between her decks, without the oil, I think, 300,000 pounds of whalebone, if cleaned, and dried, and bundled; and if put in slabs, and put together with the gum on, she would carry about half the quantity *in* the same space; when it is uncleaned, the ends will bear pressing together, that is, the small ends of the bone will bear pressing together; the other end, which has the gum

on, prevents its coming together; there is generally about two inches space between the slabs; it is customary to put it away uncleaned when we are catching whales fast, and when we get off the whaling ground, and are not so cramped for room, we clean it then; but if *cramped* for room, we have to clean it before; it will take all hands an hour to clean one head of bone; the Richmond, on 2nd August, 1849, was commanded by Capt. Philander Winters, of Sag Harbor; I was first mate; William Sayre was second mate; William Cherry was third mate; we had 4 boat steerers, and altogether 33 men on board; Capt. Winters' health was pretty poor; he had not caught any whale; we had catched and tried *out* more whales than any other ship on the ground, up to the time that we was wrecked; when whales are plenty, cutting in the pieces of blubber from the whale, and taking them on board, takes the most time; it takes longer to boil them; but I suppose, after he is cut in, he is taken; our ship tried out the oil faster than any ship we heard of; we had three try pots, where other ships, most of them, had but two; on the 2*nd* of August, we had about 20 barrels of blubber left, not boiled out, and had some oil on deck; we were keeping our try works agoing; at 12 o'clock on that day we was on the larboard tack, with the wind from the southward, in a thick fog; the ship was heading about west-southwest; after dinner, the captain told me to turn the watch, that is, to let half of the men go below to rest; I did so, and asked him if he did not want to wear ship; he said no, let her go on that tack until six o'clock; I told him I thought it was impossible for the ship to go until that time; I had sounded, and told him there was but 18 fathom of water; he said, if she would not go to that time, to let her go to hell.

Claimants' counsel here states that all this conversation is objected to, and libellants' counsel states that he has not asked for it, and consents that it be laid aside.

At three o'clock she struck on a reef *or* ledge nearly half a mile from the shore—a rocky bottom. The third time she struck, it drove her rudder up through the transom, which left it hard to the starboard; we hauled all the sails hard aback; she backed off of the reef, heading to the northward, but was making water fast; we then trimmed the sail to work the ship off shore, let fly all the head sheets, and trimmed aft the sails; filled the after sails, *to* counteract the rudder, which could not be moved, but to no purpose.

She went, I suppose, about a mile from where she struck, and then brought up solid on a bottom a little rocky; not so much so as it had been; sand and rocks; we then clewed up all our sails, and took a light stream anchor, four points off the starboard bow, and took the cable to the capstan, and hove a strain on it as long as *it* would bear, but could not start her. She was heading to the northward, with the wind from the southward, and a short half a mile from the land, which was to the westward of us; we then hove over 8 casks of oil, and started the bungs of others, about fifteen, I sup-

pose, which were on deck; we then hove taught on the cable again, giving it all the strain it could bear without starting her; sounded the pumps, *and* found 4 feet of water in her hold; we then saved what things we could, and left her about 6 o'clock the same afternoon; she had then bilged. We took all the nautical instruments and what clothes we had handy that we could get at, and what provisions we could carry in the boats, and landed among the natives; we left the light anchor out; the larboard anchor which hung to the bow was cut clear *and* let run with the chain attached to it, so that if the vessel had floated she would not get clear from that; I think it was three or four days before we saw any other vessel; during that time, we slept on shore, all hands; we watched the ship all the time, and was aboard of her every day, twice or three times a day; we had several times put out the fire; it was under the caboose, under the starboard part; we pulled down a part of the try works *to* put the fire out; we put it out several times; she appeared to be safe from fire before we saw any other vessels; we had a watch on shore opposite the ship; before any other vessel arrived, we took on shore flour, bread, meat, provisions, poles to make a tent, and some nails; we found the natives on shore friendly, and they helped us to save anything we wanted.

We found a beautiful landing place, *a* handsome sand beach, about a mile and a half to the northward of the ship; the landing place was protected as the place was then; no winds would hurt it, except an easterly wind; there was about four hours darkness during the nights; the nights were short; there *were* no regularity to the tide; it rose and fell in the ship about three feet; I did not observe how much on the shore; we first saw the ship Elizabeth Frith; we had seen her almost every day; we had not missed her only a day or two, until three days before we were wrecked; we were gamming with her almost all the time—that is, exchanging boats' crews, visiting, the captain going from one vessel with a boat's crew and spending the day, or whatever time he sees fit, and the and the mate of the other, at the same time, coming with a boat's crew to the vessel from which the captain is absent; I *don't* recollect the day we first saw the E. Frith after the wreck; I went on board of her, and the second mate and also the captain of the Richmond went with me; I left him on board the E. Frith; I saw another ship, the Junior, of New Bedford, Captain Tinckham, laying at anchor about 20 miles to the southward of us; I went from the E. Frith on board of the Junior; I returned to the shore that night, and *the* next day went again to the Junior, and made my home on board of her; the E. Frith, the same night towards morning, came to anchor about a mile from the wreck, and went right to work getting the oil and bone from the wreck; the night following the anchoring of the Frith, the Junior came up and anchored about the same distance from the wreck; I think it was two days after that *I* boarded the Panama, pulling about 20 miles for her and she came in and

anchored that night, about 9 o'clock, about the same distance from the wreck; neither the Junior nor the Panama took any oil up to this time; the Elizabeth Frith was at work all the time, getting oil and bone from the Richmond; Mr. Cherry and Mr. Sayre, and their boats' crews and Capt. Winters' *crew*, they had three boats' crews of the Richmond; I saw advertisements, written by Capt. Winters of the Richmond, which were put up the next morning after the Panama arrived—one on board of the Richmond, one on board of the Frith, and one on board of the Junior; this is one of them which was put up on board of the Richmond.

(Marked A. C. B. M. and N. B. H., and annexed.)

The others were *like* this; I believe they were all alike; the oil and ship were sold the next day after the notice was put up; the 4 captains were present, Mr. Carr, 1st mate of the Junior, and myself; some men were there; I think the captains all went in one boat, and Mr. Carr and myself in the same; I don't recollect what men were there.

Before the sale took place, something was said in the presence of these *captains* as to what they were willing to give; Capt. Jonas Winters, of the Frith, said he was willing to give a dollar a barrel for the oil, if he could have the first choice; Capt. Tinkham, said he was willing to give 75 cents; Capt. Hallock, of the Panama, the same; this was talked over the night the Panama came to anchor there, and when they came on board the Richmond, it was talked over again, and all understood *before* the auction took place.

(All the above conversation objected to, and each part of it.)

Before the sale, I told Captain Winters of the Richmond I was not willing for my oil to be sold at 75 cents for the barrel; I spoke also to Mr. Cherry and Mr. Sayre, as they had spoke to me about it; Captain Winters made no reply to this; the other captains were not within hearing at the time.

(This last conversation, since the last objection, and each part of it, objected *to*.)

Mr. Carr, the mate of the Junior, offered his services as auctioneer, and acted as such; the first lot put up was struck off to Captain Winters, of the E. Frith, at $1 a barrel, as much as he wanted; there was no other bid; next lot was struck off to Captain Tinkham, of the Junior, at 75 cents a barrel; there was no other bid; the next lot was struck off to Captain Hallock, of *the* Panama, at 75 cents a barrel; there was no other bid; the next, the ship Richmond, was put up as she was then laying on the rocks, and her chattles that was on board of her and on shore; Captain Jonas Winters bid one dollar, Captain Tinkman bid five dollars, and she was struck off at that; Mr. Carr and me had before this been talking about bidding for the ship; we told Captain Tinkham *that* we would give him the starboard anchor and cable, as he wanted it for his ship; he said, no, he wanted to buy her himself,

and would give us the privilege of taking what we could after he had got what he wanted.

(This last conversation objected to.)

I thought of bidding at the sale, and should have bid, but she was struck off for $5 before I had time to think.

(This last objected to.)

Before the sale took place I took the *chronometers* from the shore, and delivered them to Captain Jonas Winters, on board the Elizabeth Frith; Captain Winters, of the Richmond, was not on board of the E. Frith at the time; after the sale, each ship went to work taking bone and oil out of the Richmond; I think the E. Frith had got out 350 barrels of oil before the sale, and about 4 heads of bone; I think she got as much after the sale as before; I think *she* had much more than she had given an account for; I thought she got 900 barrels of oil altogether and 5 heads of bone; about one-half of it cleaned; the bone she got off the deck of the Richmond, and none of it from between decks; she got some of her oil off of the deck, some from between decks, and some out of the lower holds; that from the deck was got very easy; it was rolled over the ship's side, and *towed* to the E. Frith; the articles between decks was hoisted out and towed aboard; there was, I suppose, two or three inches of water in between decks; the articles in the lower hold were hoisted out, put overboard, and towed in the same way; all they had to do was to hook on the casks and hoist them out; once in a while they would have to work a little to get them loose, and then *a* good many would come at once; the whole of it was much easier than the labor of catching whales; the oil was already tried out and put in casks; we got on board of the Junior 500 barrels in one day; I assisted the whole time, night and day; two boats' crews, 14 men all told, worked with me, including Mr. Cherry and his crew; he first worked on board the Elizabeth Frith; *he* left her after the sale, and then worked for the Junior; the Elizabeth Frith had the best chance for getting oil, and left the ground the 13th of August; there was no difference between the Panama and Junior, they used to work one party at each hatch; the Panama left first; the Junior got away the 18th day of August, and I *came* away in her; my boats, with Mr. Cherry and me, worked the same as if we belonged to the Junior, with the boats from that vessel; Mr. Sayre and his boat's crew left the Elizabeth Frith after the sale, and worked with the Panama men; Captain Richmond's boat's crew also went on board the Panama and worked, using the Panama's boats; where the Richmond lay it was nice, beautiful weather; where the *Richmond* lay, under the lee of the land; strong, rugged weather out some miles from the land where the whales were; we were about 50 miles to the southward of Behring's Straits, a little westerly; the Straits are about nine miles wide from the Island to the Asiatic coast; it was about 60 miles

wide, I should think, where we were; at the time we were wrecked, I knew there were plenty of whaling vessels north of *us*.

Q. Do you know of any whaling vessels which left that region before you did, on the 18th of August, without reporting themselves full, or which remained another season to get full?

A. I saw these vessels myself, and talked with the captains. The French vessel Ville du Pont, Capt. Smith, was not full, but went home, leaving the north, before I did. The Isaac Hicks was to the northward of us and reported 1500 *barrels*. I think she carried when full about 4000 barrels; she did not leave till after I did; she remained another season; she is not reported in yet, and can't be expected till next spring. The Catharine, of New London, left the north after we did; I don't recollect whether she reported herself full; she came home. The Columbia, of Sag Harbor, left after we did, and reported 1200 barrels, at *the* Sandwich Islands; she carried about 2400 to 2800 barrels; I don't know exactly how much. The bark Harvest, of Fair Haven, the John and Elizabeth, of New London, and Montezuma, of New London, all left the north after we did, and all reported themselves not full, except the Harvest. The Washington and Franklin, of Sag Harbor, were north of us at the time of the wreck.

(All the answer to the last question objected to.)

Mr. Carr, *on* the passage to the Sandwich Islands, told me that if Capt. Winters, of the Richmond, paid him anything for his services as auctioneer, he would give it to Mr. Cherry and me.

(This objected to.)

As to the small boats of the Richmond, two of them used by me and Mr. Cherry came to the Sandwich Islands with the Junior; Capt. Tinkham gave them to me; I mended them and *sold* one to Capt. Tinkham for, I think, $15, and another on shore for, I think, $35; one was brought to the Sandwich Islands by the Panama and one by the E. Frith; this last was the one used by Capt. Winters, of the Richmond; it was a better one than the one I sold for $35. Capt. Tinkham sold the one that I sold to him to a man on shore, at the Sandwich Islands; I don't know how much he got for it; he told me he *sold* the one he got from the Elizabeth Frith for $70; I received the boat for the master of another vessel which I joined, and gave a receipt for it.

(Remarks of Capt. Tinkham and conversation with him objected to.)

Whale boats were frequently in demand at the Sandwich Islands; the starboard anchor and chain of the Richmond was sold to Capt. Smith, the master of the Ville du Pont; it was sold at Oahu while I was there, by Capt. Tinkham, *of* the Junior; Capt. Tinkham told me he sold it for $2,200.

(Same objection as the last.)

The Panama got 3 or 4 heads of bone; I don't know the exact quantity; I saw them when they got it. The Junior got about 5 heads; there was very little left on board the Richmond; there was more strife to get the bone than the oil, because they would get the oil any time out of the Richmond, *but* could not the bone; the ship was working and the bone scattering; I can't say about whether it was more desirable on account of its value.

(Adjourned to 18th, at 9 A. M.)

September, 1850.—*Examination resumed:*

The whaling ships from the northwest coast usually resort to the Sandwich Islands after leaving the coast—a great many of them ship home whale-bone from that place; oil also could be sent home from the Sandwich Islands. After I arrived at *the* Sandwich Islands, and before the Elizabeth Frith arrived there, I heard of the death of Captain Winters, of the Richmond; I saw him two days before his death, on board of the Elizabeth Frith, which our vessel, the Junior, came up with; I don't recollect the latitude or longitude; I think we had got about half way to the Sandwich Islands; I got into New Bedford on the 20th April, 1850, in the Lagoda, the morning after *the* wreck of the Richmond; I expected to see other vessels as soon as the fog cleared away. (This objected to.) Before I saw any vessel I made arrangements to leave; I talked it over with my boat's crew; my boat was all ready; I was going up north towards Behring Straits to look for vessels to go home in.

Q. Suppose you had found such vessels at the north—was there any, and if so, what arrangements as to their coming where *the* Richmond and the rest of the crew were?

(Objected to.)

A. Yes, sir; they would come there, because I was to leave the rest of the crew there; I could not leave the men there; it would not have been more than 15 miles out of the way to come there.

Q. On the day the E. Frith dragged her anchor, how was the weather as to whaling out where the whales were?

A. No ship, none that ever I was in, made a practice of whaling in such *weather* as there was on that day. The wind was from the southward. The E. Frith dragged both her anchors; she got under weigh then and could not get back again the next day, the gale was so heavy; I had been at the Richmond that day; the men from all the ships had been there the fore part of the day; it was moderate weather where the Richmond lay, and a heavy gale outside; the *weather* did not affect the towing to the other ships, but the current did; the tide was running the opposite way from where we wanted to tow the oil; sometimes on other days it ran the opposite way; there were times in the day when it did not run any; we could tow 3 or 400 barrels of oil quicker than we could tow one

small whale; we generally tow whales *when* the vessels can't get to them.

On *cross-examination*. Before I joined the Richmond I was not in the employ of the libellants; I was in the employ of Post & Sherry; I joined the Richmond at the Sandwich Islands for the object of staying another season, and making another voyage; I was requested by the captain of the Richmond; I never asked him to allow me to join her; he had a first mate, but he was going to leave; *my* share was to be one twenty-third of what was taken after I joined; I was to have no portion of that which had been taken before; I don't know how much my share will be of the oil and bone libelled in this suit if the libellants recover it; I am to have some share or portion of it certainly; I worked hard enough for it.

(The claimants' counsel here insists that the witness is interested in the event of this suit, and that his evidence shall be excluded, *and* claims all benefit of the exception as if made at the commencement of the examination.)

I never myself made any examination of what was on board before I joined; I took the captain's word for it; I never heard of a vessel going whaling for whalebone alone; I have known of oil being refused or thrown over to make room for bone; I myself have never seen it done; have not heard of it so *often* as to induce me to believe it is a common thing; Captain Winters' health had been poor for four months; it was all the time alike till his death; he looked well enough to look at him; he was about attending to his business; the *book* before me, and to which I referred yesterday, is the log book of the Richmond.

It was not all kept by me; all that I referred to yesterday was *kept* by me; the transactions of the day she went ashore, not all the particulars are written up—were written up the night I went ashore and left the wreck; the first time the ship struck she did not strike square on the bows; it was not broadside on; she was not heading square towards the land; the mizzen-mast was cut away one or two days after the wreck; nothing had given *away* about the mizzen-mast at the time we left the ship that night; it was cut away before the arrivel of the E. Frith; I don't know the reason the larboard anchor was cut away; did not strike against the bow; it was customary, where we was, to carry it hanging over the bow, so as to be ready to anchor when we wanted to; we did not watch the ship the night we went ashore; we watched her *the* next night; I myself and men sent there for the purpose; I did not go on board in the night, went late about 11 o'clock, and again about 4 o'clock in the morning; it was possible at any time in the night to see what was going on in and about her; it was not so dark but you could see; we took some things ashore that we wanted, and the first night we *secured* the fire; we didn't fasten the hatches, didn't lash anything; the things were always lashed

as a general thing; I always walked abreast of the ship backwards and forwards 2 or 3 times a night, and did not go down for the purpose of watching; had no regular watches set; men went with their own will; didn't come away till they were relieved; the place where the Richmond *went* ashore was in latitude 65° 35′; got this by estimate from the previous day's observation; longitude 170° 55′ W.; it was not in Behring's Straits; it was in the North Pacific Ocean; no bay or harbor where the vessel was then; was one about 12 miles from there; the Asiatic coast where the vessel lay was not very high nor *very* low; it was flat and gullies; if you went ashore and *went* inland you would have to go up hill; there were two points of land, one north and one south of the ship, extended but very little way; the point to the north of the ship would have been struck if the ship had gone directly north, keeping half a mile from the main land; that point was low and rocky; the one to the south was sand, and grass, and low; the natives lived there; *I* should judge the land on the easterly shore to be 60 miles from the ship; it was in sight when the weather was clear; to the south there were islands; St. Lawrence Island right in the passage, not in sight from the ship; the easterly winds have not prevailed there when I have been there, I mean where the ship lay, nor any where about there.

The gales that blew there were from *the* northwest and southwest; blew off the land; she was sheltered from them by the land; it makes no difference whether the land is low or high when the ship is half a mile from land, as the wind will blow over her; the wind can't take the water to make a sea to disturb the vessel at that distance.

It was a gale from the southward when we went on, not a heavy gale; if the wind was broad to the southward, *she* would not be protected fully; if the wind was from the northward due north, she would not be wholly protected; this point would break the sea; she would not be exposed to either a north or south wind; from this point to the southward the Asiatic *coast* tends gradually to the westward and then out again to the eastward; going south 20 miles from the wreck where it turns to the *eastward;* the Richmond was wholly protected from the southwesterly winds; the Richmond was in no danger from stormy weather, except to winds northeast, east, and southeast; these points same each way, say from N. E. and S. E. would be dangerous wind; from S. by E. to N. by E., at this season, northwest winds may be expected, and will blow eight days out of ten; then are most prevailing; gales generally *start* from the southwest and haul to the northwest; never saw any other winds there in both seasons, that is heavy weather; I think unless the ice has carried it away, her hull is there yet; it is very doubtful if the oil that was left in her is there; I think it would have remained in her if it hadn't been troubled; I have heard that there is floating ice there in the winter; I have seen it there; I saw it

there *when* I was in the Richmond 3 or 4 weeks before the wreck; ice is apt to injure vessels when floating around and dashing against them, but I never saw any so near land as that; I suppose that ice forms thickest in shoalest water; this ice that I saw was floating ice, floating to the north with the current; the three vessels anchored to the eastward of the wreck; they were some distance apart—about *a* mile between the three; all in the same direction; I don't mean they were the same distance from the Richmond; I should think the Panama was the fartherest from the wreck; I went on board the Panama to see if they wouldn't come in and take one-third of the men, and see if they wasn't willing to take some of the oil that was to be sold; I told Capt. Hallock there was going to be a sale; I was the first *one* that communicated that time; the notices of sale had not been up the day I boarded the Panama; I should think it was 3 o'clock in the afternoon when I boarded her; they were boiling; I can't be positive the Panama arrived there the afternoon before the sale; I think it was not Capt. Winters put the notices up; I saw him; I did not assist him; I told Capt. Hallock, of the Panama, when I first *boarded* him, how much oil the Richmond had in her, and that it was going to be sold; I didn't tell him the time; I don't know but I might have told him; I don't recollect; I don't recollect of Mr. Sayre's being at the sale; I cannot swear that he was not there; I don't recollect of Mr Cherry's being there; won't swear whether he was or was not; I can't recollect how many of the *Richmond's* crew were there, about 5 or 6 I think; can't swear that there was any; Mr. Carr offered his services as auctioneer to Capt. Winters; couldn't give his words exactly; as near as I can give them, he told Capt. Winters he would stand as auctioneer; Mr. Carr asked him why he didn't give it to me; I didn't hear him make no answer; I was standing with them about six or eight feet off Capt. Winters; was standing around together on *deck;* I knew Capt. Winters of the Richmond had sent word the day before to Mr. Carr, on board the Junior, to act as auctioneer; I knew he had sent to Capt. Tinkham to ask Mr. Carr; Mr. Carr refused; Mr. Carr told me he had refused; he didn't tell me that, on consulting Capt. Tinkham, he had agreed.

I didn't hear any person make any remarks about the sale of the vessel, relative to the sale *and* conditions, until Mr. Carr commenced; I didn't hear Capt. Winters say anything at that time; he did speak to Mr. Carr; I didn't hear what he said; Mr. Carr said the oil in part would be put up for sale; when I said I hadn't time to think about bidding, I meant the sale of the ship; I didn't want to bid on the oil; I didn't want to buy any of the oil, I had no place to put it; at the time I took the chronometer aboard *the* Frith I didn't take anything else that I recollect; they were not taken on board with Capt. Winters' clothes and personal effects; I heard the conversation between all the captains before the sale about bidding for the oil; it was on board the Richmond the day

of the sale—before the sale—I heard Jonas Winters speak first about it; he spoke to Capt. Tinkham and Capt. Hallock, all standing together by the mizzen-hatch; *he* told those captains he was willing to give a dollar a barrel for the oil that he took from her; this was all that Capt. Winters said that I recollect; then Capt. Tinkham and Capt. Hallock spoke together to themselves, and said they would be willing to give 75 cents a barrel; it was more work to get it than it was for Capt. Winters to get his; I was standing by them; I had not been conversing with them on the subject; *I* had been talking with them on board the boat about one thing or another; I don't recollect the subject after I got aboard; I had not conversed with them; the captains were talking together, and I had nothing to say; I was occupied in listening to what they said; I can't recollect their saying anything else at that time; don't recollect of hearing them say anything about it being as much *trouble* to get it out of the Richmond as to take whales; I had been on board the Richmond while the Frith was taking the oil she got before the sale; I was not there all the time they were taking it; while I was there I made it my business to look on while she was taking their oil; I had no particular reason for so doing; I had nothing else to do; I did not count the barrels; I asked the mate and second mate to keep count; I don't know of my own knowledge how many barrels of oil they got; I can swear to the quantity they took from between decks before the sale; I got the guages and the number of casks; I should have to go to my chest for it; Mr. John H. Jones has got the account of it; I gave it to him at Cold Spring; I kept that account, the whole of it; there was rising 300 barrels got from between decks; *I* kept an account of the numbers of heads of bone they took; I couldn't swear to how much bone the Frith had before the sale; they had over three heads, I know; I had an account of all the oil there was on board the ship Richmond that was taken while I was on board of her; I kept no account of what was taken by the vessels after the sale, the Frith included; she took all that was between decks *before* the sale, I think; I won't swear positively before the sale.

The three heads I spoke of above *was* uncleaned, lay on the oil between decks.

Q. How came the vessels to take bone with the oil?

A. That was the way it was put up at the sale—a proportion of bone was sold with each lot of oil.

I had heard the two Captains, Winters and Captain Tinkham, talk about the selling before the sale; it was on board the *Elizabeth* Frith; Captain Hallock was not there at that time; the vessel was bilged, and was over on her side; not altogether; the tide ebbed and flowed through her; the lee-side of the ship, between decks at high water, might be up to your middle.

The casks between decks on the lee-side were not under water at high water; the vessel was over on her side so much as to leave

one-half from the centre dry at high water *between* decks; don't recollect of having any empty casks aboard; those that we had started the bungs out of were on deck and had gone; the E. Frith had taken them; all the Elizabeth Frith had to do was to take off the hatches, and then hook on and hoist it out; I know Mr. Cooper, the mate of the E. Frith; I don't know that Mr. Cooper and his men had at any time to cut away any deck-beams to get at the oil; he might have done so when I was away; *the* men working at that were standing between decks; there were loose boards and articles floating round where they were working on the *the* lee-side; I don't recollect the circumstance of one of the E. Frith's men being bruised there; never heard anything about it; the work was easier than catching whales in that part of the world in that part of the season; could do it quicker and get more oil in the length of time; I assisted Capt. Tinkham, of the Junior; I was to take passage *with* him to the Sandwich Islands; I was not obliged to work for that vessel on account of being taken home in her; I told him I was willing to work and work my men; the Panama's men were working at another hatch at the same time; they got their oil from the lower hold; they did not have so easy a time as the Frith did, they had to cut away the beams; the lower hold was under water; there were no *other* vessels getting oil out of the Richmond, till after the sale, except the Frith; the men that left the Frith went to work, part on board the Junior and part on the Panama; I heard Capt. Winters, of the Frith, offer me, Mr. Cherry, and Mr. Sayre, passages to the Sandwich Islands, and some of the boat-steerers and crew in the Frith, and we all refused; I went on board of the Catharine, at the Sandwich Islands; I did'nt look to see if she had a *full* cargo; the Isaac Hicks I went on board of, and looked over the hatch and saw she was not full; I did'nt go down below to see; I knew by the space that was not filled up that she lacked 2000 barrels; I knew she had not met any ships and sold any, for I had been in company with her from the Fox Islands to the Sandwich Islands; were not every day in company; *lost* her three days before we got in; I can't swear she was not full before I saw her at the Fox Islands; the Columbia I went on board of at the Sandwich Islands; went below; she was not full; had not been in company with her; we had spoke her and gammed one day; the Washington I went on board of at the Sandwich Islands; I went below and saw that she was not full; had been in company with *several* days, from the Fox Islands to the Sandwich Islands, but notall the time; Mr. Carr said he thought Mr. Cherry and me needed the money he was to get for auction services more than he did, and he was going to give it to us; the oil and bone I said sometimes shipped home from Sandwich Islands, is sometimes shipped in merchant vessels, sometimes in whalers; I have known it brought home in merchant vessels two or three dozen times; they go there *for* that purpose; vessels that have been in the Pacific on other busi-

ness; we expected to see, when the fog cleared away after the wreck, the E. Frith and Junior; we had been gamming with them before the bad weather came on, two or three days before, and we knew it was a good place for cruising; the whaling was good there before the gale came on; it would not be safe or convenient for vessels to cruise there where the Richmond *was* wrecked after the time we left; a vessel in the usual course, to come out from there, would have to come within 15 miles of the Richmond to go out the westward of St. Lawrence Island; if to go to the eastward of St. Lawrence Island about 30 miles; a raft was cut adrift one day, I recollect one of the Frith's rafts, on account of the current being so strong they could'nt tow it; I don't mean they let them *all* go; they let enough go so they could stem the current; was not very rough where they were towing; it was the same day, I think, the Frith dragged her anchor; I mean she could'nt get back, and did'nt; the tide is very irregular there; sometimes it will run out three hours, and sometimes about one; sometimes the opposite way; it ebbs and flows *in* a day; the prevailing current is to the northward; there is no difficulty in keeping the casks together when towing, when properly put together; it is not customary to put 3 or 400 barrels in a raft at once; from 100 to 200 barrels; I have taken in a raft, aboard the Junior, at this time and this place, I think, 190 barrels; the reason why vessels can't get to whales is, when there is no wind; I arrived at New Bedford on *Wednesday*, I think, and got to Cold Spring on Monday; Mr. John H. Jones, *Mr. Jones* asked me if I thought it was best to institute proceedings for the recovery of their oil and bone, and I told him yes, I thought it was best to; he said he would see the lawyers and get their opinion about it; he did not request me to see the lawyers; he said he would take it on his own hands; I was to have my *share*, if they were successful—what the law allowed me; I asked Mr. John H. Jones to settle with me for the oil that was sold, at the price it was sold to those vessels; he let me have the money; I did not ask him to give me anything further than what that came to at that time; I have never asked for any settlement for anything of that voyage, and been told to wait till this suit was through; I do not *know* whether the libellants have settled with the owners of the Junior; I don't know that the owners have paid Mr. Carr for his services as auctioneer; I did'nt hear from any of the libellants that any proceedings had been commenced before I arrived.

Q. Was not this suit instituted upon your statements and recommendation?

A. Yes, sir. I had never told any body on board the Junior that a suit would be commenced, *or* that I should advise one to be commenced; had never told any one on board the other vessels, nor anything to that effect.

On further direct examination: The entries in this log-book, between the 17th of October, 1848, and the 2d August, 1849, were all

made by me; I kept a reckoning, and entered it here every twenty-four hours.

(The log-book is left with libellants' counsel, identified by initials of counsel, C. B. M. N. B. H.)

I think there were as many as 18 new men who joined the Richmond at the Sandwich Islands about the time I did; I believe all the foremost hands had advances made to them at the time they joined; I know they had from 8 to 15 dollars each; I did not have any advance; heavy anchors and heavy ground tackling are very useful and very much in demand for whaling vessels *on* that *northern* region where the Richmond was wrecked; we sold one before the Richmond was wrecked, that belonged to her, about 15 miles to the northward of St. Lawrence Island, at the rate of four cents a pound; Mr. Sayre arrived home before I did; the owners had seen him, as I understood, before I arrived; after I arrived at Cold Spring, I sent for Mr. Sayre, and he came to Cold Spring, and Mr. Cherry was there with him; *I* do not know that this suit was instituted upon my statements any more than theirs; I heard them say to Mr. Jones they were not willing; did not feel satisfied to have it settled the way it was—that is, upon the basis of the mere proceeds of sales.

Being further cross-examined: There are no white settlements in that part of the world where we were wrecked; I never saw any; there are places on the beach where anchors can be *stored* and sold; where we landed our provisions and things, and other places at the South, where the natives lived, they could be put in tents; they could be kept there while we staid there, and the year round; we could have sold anchors if we had had them on board our ship when we were up there; they kept them for sale at the Sandwich Islands; there *is* a Russian settlememt on the same coast where we were wrecked, some distance off, about a fortnight's sail, where vessels often go to purchase articles they may want; I heard Mr. Sayre and Mr. Cherry request Mr. Jones to take some proceedings in this matter the same week I arrived at Cold Spring; Mr. Jones asked all three of us then together if we thought it best to take some proceedings? and we all said yes; they thought they *were* entitled to one-half for salvage all together—not besides what they had got, one-half of what was saved.

On further direct examination: We landed several casks of bread, pipes of bread, and 90 gallon casks of molasses, and casks of flour, and topsails, ship's sails; four or five men could roll the casks up on the beach were we landed them; I never heard of right whale oil freezing; I don't think it would hurt if it did freeze; white persons could live there during *the* winter; three ships did live there, but they could not live exposed as the natives were; none of us thought of remaining there during the winter; I have been as far north with Captain Roys as 71° 30′ north, in the month of August, 1848, the same year that I joined the Richmond; I had

just come from there when I joined her; I never heard of any other ship going so far north; we had *all* the accounts of cruises, I believe.

CHARLES H. REEVES.

Sworn, this 18th day of September, 1851, before me.

NATH'L B. HOXIE,
Com'r of Deeds.

U. S. DISTRICT COURT.

WALTER R. JONES and others,
vs.
The CARGO of the Ship RICHMOND, N. & G. HOWELL AND POST & SHERRY, claimants.

It is hereby stipulated and agreed by and between the proctors for the respective parties in this cause, that William Cherry be examined as a witness de bene esse in said cause, on the part of the libellants, *at* the office of W. H. H. Moore, esq., No. 104 Wall street, on the 28th day of September inst., at 10½ o'clock in the forenoon; that such desposition so to be taken after being sworn to before a commissioner of deeds or other officer authorized to administer oaths for the State of New York, or before a United States Commissioner, may be read in evidence on the trial or hearing of this cause by the libellants or the claimants *with* like effect, subject to all legal objections, as if the same had legally been taken before a magistrate or officer of this Court upon an order and notice, &c.; and that the same need not be filled, but may remain in the possession of the libellants' proctor, a copy thereof to be served on the claimants' proctor within ten days after such deposition shall be sworn to.

STEVENS & HOXIE,
Claimants' Proctors.

New York, 28th September, 1850.

UNITED STATES DISTRICT COURT,
Southern District of New York.

WALTER R. JONES and others, libellants,
vs.
The CARGO, MATERIALS, and FURNITURE, of the Ship RICHMOND, or their proceeds, N. & G. HOWELL, claimants, and POST & SHERRY, claimants.

SOUTHERN DISTRICT OF NEW YORK,
28th September, 1850, *ss*:

William Cherry, a witness produced, sworn, and examined de

bene esse on the *part* of the libellants, doth depose and say, in answer to the several questions put to him, as follows, viz:

I now reside in the city of New York, and expect to sail from New Bedford, on a whaling voyage about the middle of October next; I joined the ship Richmond, of Cold Spring, at Sag Harbor, just after she had sailed from Cold Spring, in the month of July, 1846; I shipped *as* boat steerer at a lay of 1-55th; Philander Winters, of Sag Harbor, was master; Mr. Robinson, I think also of Sag Harbor, was first mate; Mr. Bario was second mate; Mr. Wm. Sayre was third mate; there were four boat-steerers and a crew, making thirty-two, all told; after cruising on the Atlantic and Indian Oceans we stopped at Hobart Town; went, in the summer of 1847, whaling on the northwest coast of America, off Fox Island; returning, stopped *at* the Sandwich Islands and recruited; then cruised on the New Zealand whaling-ground two months, or over the months of December and January; after that came back to Sandwich Islands and recruited for the northwest coast again; left there in March, 1848; went a second time on the northwest coast, in the summer of 1848, and returned to the Sandwich Islands in September, and recruited again; while there that fall Mr. Reeves joined us as first mate; Mr. Robinson had left us at Hobart Town; Mr. Bario came on as first mate and left us at Oahu; Mr. Sayre became second mate; I became third mate; when I became third mate the captain agreed to give me 1-50th lay instead of 1-55th; when Mr. Reeves joined us we had between fourteen and fifteen hundred barrels of whale oil on board, all secured and put in the lower hold in good order.

Several men joined our ship at the Sandwich Islands besides Mr. Reeves; I think ten or a dozen; when we left Sandwich Islands with Mr. Reeves we had of the original crew only three men before the mast—the captain, Mr. Sayre and myself, one boat-steerer, and the cooper; eight in all; the men who left had all been settled with for their voyage, with the exception of those who deserted: several had deserted; I recollect of twelve at different times; *I* think there was more; that is all I can recollect.

The new men who joined the ship all received advances in money as well as clothes; they got from ten to fifteen or twenty-five dollars advance in money; the clothes would be uncertain; some want a very few articles; others want everything; the captain and his first mate, did not got along very pleasantly generally, but what quarrels they had didn't *amount* to much; Mr. Robinson and Captain Winters quarrelled a great deal.

(After evidence as to the captain and officers of that vessel, and their intercourse with each other, objected to.)

We left the Sandwich Islands the last time about the latter part of October or first of November, 1848; we first cruised for whales in the Eastern and Japan Seas, and caught four whales; on leaving the Japan *Sea* we sailed along the coast of Kamskatka or Asiatic

coast up towards Behring's Straits, and before the 2d of August we caught ten more whales; generally large whales; the last fourteen whales that we caught produced between 23 and 2,400 barrels of oil, according to our account and guages, making the whole quantity on board, as we thought, between 3,800 and 3,900 barrels; it was all tried up but about 50 barrels *of* blubber, which we had partly on deck and partly in the main hatch; we thought we should get through trying it or boiling it out between twelve and two o'clock that night.

7 of the last-mentioned 14 heads of whale bone had been cleaned and put away, and 7 had been split up in 3 or 4 slabs to a bunch and put away, all but one head; 6 heads had been put in the run and in *between* decks; one was on the deck at the time the ship struck. The 14 heads, altogether, I hardly know how much they produced—we weighed several heads—I should think about 2,400 pounds or thereabouts when dried and cleaned.

I was on deck when the ship first struck, engaged with 2 boat-steerers, in front of the try works, superintending the boiling out of the oil; I think it was about half-past 2 o'clock in the afternoon of the 2d of August, 1849, *in* a thick fog; the wind was blowing quite fresh from the southward; our main-yard was lain aback. Stopping the headway of the ship, we were on the larboard tack, heading W. by S. I had looked a few moments before; we were close-hauled on the wind; she laid where she first struck some ten minutes, as near as I can recollect. We backed all the *sails* as soon as we could. She ran over rocks, knocked her rudder up and disabled it, so that we could not manage her by her rudder—it was perfectly useless; when she floated she ran along shore to the northward before the wind, and then fetched up about a quarter of a mile from the shore, I should think; not more than that I think. We tried to get her off, all the means in our power, *and* could not start her. While they were at work at her trying to kedge her off, I sounded the pumps and found 3 feet of water in her hold. Mr. Reeve and myself sounded her some 10 or fifteen minutes before that, and then found no water that the pumps would reach. We found then it was useless to try to start her; before this we had tried to lighten her, rolled several casks of oil overboard from the *deck*, I think from 5 to 8; started the bungs of several more which stood on their heads, so that half of the oil would run out; I can't say how many, but not a great many. We lowered down the sails and clewed them up, and let them hang; we left the ship for the shore—I don't know what hour, I think about six o'clock. We wanted to get situated, or find some place on shore before dark. *We* took some provisions and clothing. We found a landing-place, a very good landing considering the situation; I should think it was two miles or three from where the ship struck to the northward. It was not in open sight from the ship, but around a point.

I never saw the ship move or float from the place I have men-

tioned, where she brought up solid. The kedge was left out when I left her; I suppose it weighed 500 pounds; we called it *that*. It had a small hawser and two tow-lines attached to it. Before we left her the captain cleared the larboard anchor and let it drop under her fore foot with its chain attached to it. If the vessel had floated clear, that would have kept her from going any further in shore and from getting away. I should think it was about 3 days before we saw any other vessel, before we saw the E. Frith. *There* was a thick fog all that time. It was just when we saw her that the fog cleared up. During that time we went on board of the Richmond three or four times a day always. We got provisions, clothing, bedding, and small stores, crockery, &c., some sails to build tents with. We also did what we could to prevent the vessel from being injured. The vessel got on fire from the try works. I put it out the first time *myself*. It was put out several times. We were near enough to see the fire from the shore; we could see it from the mountains or high bluff right on this point between us and the vessel. A look-out was kept. The nights were short at that time. I knew there were ships in that neighborhood, and to the north of us; had seen several of them previous to our going ashore.

Ques. *Before* you saw them after the disaster, can you say what your expectations were in reference to their having anything to do with your catchings?

(Objected to.)

Ans. We expected to go and find some of them to take our oil. We thought it would be much easier to take it from the ship than it would be to take it from the shore; because it would not be any trouble to get it there to what it would *be* to get it off the beach; besides, we would have to tow it that distance to land it, two or three miles, and the ships that did take it, the farthest of them was not more than a mile and a quarter off; right off to sea, or off shore.

Question. Did you think it would have been advantageously landed if there had been no ships there but what were full?

Answer. It could have been landed, (objected to,) because we landed as heavy stuff. *We* landed molasses and bread, and in the ruggedest weather, too; we did not pick smooth weather for it; it was a tolerable good landing for landing such things; it was a little bold. The natives were very civil; they helped us to get our things ashore, helped us to haul our boats up; they were very friendly indeed; they done all for us that laid in their power. The winter cold would not hurt the oil. *It* would have damaged the bone.

Q. What was the situation of the Richmond as to protection from storms or wind compared with the places where you caught whales, or farther off from land?

A. She was in a very exposed position. There was nothing to

protect her from northeast or southwest winds; but northwest, or southwest, or westerly winds would not hurt her where she *lay*. The point to the north of her, which I have mentioned, did not run off far enough to protect her; the land run along very uniform until you come to this point, and then there was a small bay put in there. In high latitudes, in any part of the world, westerly winds prevail. The northwest winds up there were the heaviest. I think it was two or three days after we first went on shore before the captain went on board the Richmond again. *We* had got everything we needed before he started.

We were making preparations, Mr. Reeve and myself, to go on board with our boat's crew, when I see the captain pick up an axe and follow us down to the boats, and get ready to go off himself. He did not say a word with any one as to what he was going to do, but I suspected hew as going to cut away the masts, (*all* this objected to.) Then I picked out three men to go with him, and I told them not to let him cut away the fore or main-mast, and I explained to the men the reason.

Q. State concisely what was your reason?

(Objected to.)

A. I told them I thought he was going aboard to cut away all three masts, and if he attempted to cut the fore and main-masts to stop him, that we wanted those two to take *the* oil out with.

Q. What occurred?

Neither I nor Mr. Reeve went aboard at that time on account of the captain agoing, for he never would consult us about anything. The captain went aboard; when I went aboard afterwards, I see the mizen-mast was cut away; it must have been done when the captain was on board at that time.

Q. How was the captain's health at this period?

A. Very poor, indeed; we did not expect him to live. I had known of his taking medicines, great quantities of it; I had known of his taking repeated doses of powerful medicines. I think he had struck one or two of the whales, I don't recollect which; he did not kill any; he did not pretend to work on them; he was too weak. Before this, we had been in company with the E. Frith all the time since we came out of the Japan *Sea*. Saw her every day except about 10 or 11 days that we lost sight of her at the Anadin Sea, just after we took our first whale up there to the northward. The captain of the E. Frith was a brother of our captain, had been more at sea, an older whaler. When the E. Frith came in sight after the disaster, our captain and Mr. Reeve went on board of her, and I never saw our captain afterwards; I went on board the Frith two several times *but* did not see him. I saw the steward of the Frith, another brother of our captain, and he said our captain had turned in. The next day after the Frith came in sight, I went

on board of our ship to help get the oil out of her. I went with my boat's crew, and Mr. Sayre with his boat's crew; Mr. Sayre went before me in the morning; I did not go till after breakfast. By that time they had got all the oil *off* the deck, and we helped them all that day to get the oil out from between decks, until we got it all out, and helped them to tow it to the E. Frith. After we got it alongside, the captain of the E. Frith invited us to stay to supper, and wanted us to go to work to hoist the oil in; I would not do it; me and my boat's crew went ashore to get supper there. Mr. Reeve told me in *the* morning I could get aboard the Junior and have a passage in her, and I preferred that rather than go in the same ship with our old captain. I went ashore and got supper about 6 o'clock. Mr. Sayre remained, and I saw him take hold and go to work hoisting in oil into the E. Frith. He came ashore about 9 o'clock at night, and got his supper on shore, and remained all night on shore. *While* on board of the Richmond that day, when I came up from between decks, I saw a notification of the sale of the vessel and cargo on the main-mast of the Richmond. By the spelling and handwriting, I think the paper now shown me is the same, (witness refers to the paper marked A, C, B, M, N, B, H, annexed to deposition of C. H. Reeve.) I did not see this put up. The Junior *came* up that night; Mr. Reeve had been on board of her all night. The Junior came right up, and was engaged one day in boiling out a whale that she had caught. The Frith was taking care of the oil she had got from us; coopering it and stowing it down, and taking care of the bone that she had got from us. I don't know how much bone she got; I helped them get out three large *heads* from between decks myself, and from the after hatchway; that was besides one on deck. I saw her get some of the cleaned bone; I saw the third mate get some of it, but I can't say how much of that she got. I was not present at the sale; I and my men staid on shore all day. After I saw the notice, and before the sale, I spoke to Mr. Reeve on the subject. We consulted together, *Mr.* Reeve, Mr. Sayre, and myself.

Q. What was the result of this consultation? (Objected to.)

A. We spoke together about what right the captain had to sell our oil at such low price as 75 cents a barrel without asking us whether we had anything to do about it or say about it; and Mr. Reeve said he would speak to the captain about it; and I don't recollect that Mr. Reeve and I ever spoke of it afterward; I mean as to whether *he* ever spoke to the captain or not. Mr. Sayre went aboard another ship, the Panama, with his boat's crew. Mr. Reeve, with his boat's crew, and I with mine, went to the Junior, of New Bedford, and came to the Sandwich Islands in her. After the sale I joined the Junior, and helped to get what we called 900 or 1,000 barrels of oil. I don't know how much bone there was. I saw *quite* a quantity of it piled up on deck on board the Junior. The three vessels took all the bone we could get, and I think got

pretty nigh all there was. I was one of the very last that left, and come on the last ship. We stayed 3 or 4 days after the others left, for we judged there were something like 800 or 1,000 barrels of oil left that was afloat and not stove. There was a *good* deal of it stove. I can tell what we done in getting the oil. I don't know what the rest done. In one 24 hours we got on board of the Frith between 400 and 500 barrels, and stowed nearly half of it down that day. The Junior kept on taking till he got enough. There was no difficulty about it all; all we had to do was to hoist it out after we got the beams cut away, and roll it overboard *fasten* it with ropes as we threw it over, fix it together in a raft of 150 or 200 barrels at once, and tow it to the other vessels. I did not see any danger at all; no danger in the heavens. All the danger was that the boat-steerers were sure to get themselves wet in between decks. They put the cant-hooks on to the casks, so that we would hoist them out, and brought the casks to the hatch, so that we could hoist them out. In catching *whales* and cutting in, it is a common thing to get. A man can't well do it without getting wet. The whole boat crew, all of them more or less, get wet if it is as beautiful weather as ever shone, and get worse wet in bad weather, get drowned out almost, all hands.

They took what oil they got in the Junior in one quarter of the time, in my opinion, that it would have taken to have caught whales and boiled it out. *They* could not take many whales at that time, because they had not the weather; it was impossible. They had a gale of wind most of the time. At the same time that they could not catch whales, it was so that they could get oil out of the Richmond. It was smoother in where she lay, and we could watch the proper time to get the oil out. We could not catch whales during such a fog as prevailed from the time we *got* on until we saw the E. Frith. Fogs prevail up the northward there.

Being cross-examined, he says: I have not been in the employ of the libellants before this voyage; I am not now in their employment. I arrived at New Bedford the 4th of April last in the ship Montreal. I have never calculated what my share will be in the oil and bone libelled in this suit if the libellants recover it. I had a fiftieth of the *voyage*. I had been paid for oil that was sent home from Oahu, taken before we went to the northwest coast the last time. I am to have some share of the oil and bone libelled in this suit if the same is recovered by the libellants. I am not to be paid anything on account of it if they do not recover it. This suit is prosecuted partly for my benefit. I have not executed any release to the libellants of any interest.

(The claimants' counsel here insists *that* the witness is interested in the event of this suit, and that his evidence shall be excluded, and claims all benefit of the exceptions as if made at the commencement of the examination.)

I saw some men paid their advance; I did not see all paid. I saw some others have money. The casks thrown overboard and started at the time the Richmond struck contained from 6 to 8 barrels each. The shore right opposite where the Richmond *struck* was a rocky shore, and the bottom was rocky. We did not have all sail set on her when we went ashore; had jib and maintop-gallant sails on, and that includes topsails. Where she fetched up and remained was all rocks, a ledge of rocks on each bow. She was right between 2 rocks; look straight ahead on the ship's bows, you could not see a ship's length, the fog was so thick; looking along close to *the* water, you might see twice her length, and that was as far as you could see. The shore was mountainous right opposite the ship; where we landed with the boats was quite a valley. There was very little surf when we went ashore; the wind was blowing right along shore. If it was blowing right on shore it would be very bad. She thumped very light after she fetched up; the men were at work *all* the time, and they could not work if she thumped much. This fog continued all the time until we saw the E. Frith, and about half an hour before we saw her it was as thick as ever. We took from the Richmond all that we wanted at that time in the way of stores, clothing, &c.; can't tell how many sails we took; took quite a number of light sails. She was not pretty well dismantled after we got through. The sails that were standing *on* her were all broke to pieces; could not furl them on account of the ship's thumping heavy at the time we left her. They were old sails. She was keeled a little at this time. I presume there was a hole in her bottom, the water came in so fast. Before we struck we had a fog about 2 days, and the day before we struck it lit up about two hours, and we saw two ships then, one to the northward and one to the eastward of us, a good *ways* off; could not make out what they were nor who they were. I never had the least idea that we should ever get away from there in the Richmond; she was irrecoverably wrecked. The cargo of the Richmond could have been landed by towing and rafting. It would have had to be taken to the place where we landed. There was no place to keep it in there, no buildings in which it could have been stored. I would not have been *willing* to stay there and take care of the oil if it had been landed; I don't know of any persons there that would have been willing. We did not have any northeasterly or southwesterly winds then without it was very light. I was at work all the time the men of Junior were there at work. I was on board of the Junior and the Richmond; most of the time on board of the Junior. I don't know that Captain Winters, of the Richmond, *was* on board of the Richmond at any time while they were getting oil from there, they said he was on board at the time the notice was put up. I worked on the Richmond, principally on deck, except when we were getting the oil out from between decks for the Frith. I saw the officers and crew of the Panama working there; they were working at a

different hatchway from where I was; one ship's company at each hatch. I refer to the men *of* the Panama as well as the others when I say there was no difficulty or danger in getting out the oil. Mr. Carr was then at work with me; I worked under him most of the time. The captain of the Junior had agreed to take me and my boat's crew to the Sandwich Islands, and said, if I would turn in and work to get the oil out he wanted, he would pay me well, and make the crew a present. The Panama came in sight *the* same afternoon that the Junior came up. The Panama came the same time that afternoon, the day before the sale. I did not see any of the officers of the Panama until the day after the sale. I was doing nothing on shore that day of the sale; I apprehended some trouble about the sale, and did not want to be in the way. I do not know of my own knowledge how much oil and bone either the E. Frith or the *Panama* got. The men of the Panama got their oil out of the lower hold. I advised the institution of this suit. I advised Mr. John H. Jones to recover what belonged to me, if I could get it. I claimed that a share of this oil belonged to me. I talked with Mr. Reeves and Mr. Jones together, and Mr. Sayre; we came home in different ships, and all met then for that purpose. Mr. Sayre got home first, and landed at Sag Harbor. I *waited* after my arrival at New Bedford some three weeks for Mr. Reeves to come there, and after his arrival we came to New York, and then to Cold Spring, about this matter before going to see our friends.

WILLIAM CHERRY.

Sworn this 28th day of September, 1850, before me,

NATHL. B. HOXIE,
Commissioner of Deeds.

Filed June 4th, 1852.

U. S. DISTRICT COURT,
Southern District of New York.

Part of the cargo of the Ship Richmond,
WILLIAM R. POST and JOHN SHERRY,
claimants,
ads.
WALTER R. JONES and others.

Same Court.

Part of the cargo of the Ship Richmond,
N. and G. HOWELL, claimants,
ads.
WALTER R. JONES and others.

It is hereby stipulated and agreed *by* and between the proctors for the respective parties in this cause that William H. Cooper be

examined as a witness "de bene esse" in said cause on the part of the several claimants above named respectively, at the office of the claimants' proctors, on the thirtieth day of August instant, at 12 o'clock at noon; that such deposition so to be taken, (the witness submitting to a cross-examination,) after being sworn to before a Commissioner of *Deeds*, or other officer authorized to administer oaths for the State of New York, or before an U. S. Commissioner, may be read in evidence on the trial or hearing of this cause on behalf of either or all the claimants above named, or by the libellants with like effect (subject to all legal objections) as if the same had been regularly taken before a magistrate or officer of the Court, upon an order and *notice*, &c., and that the same need not be filed, but may remain in the possession of the claimants' proctors, a copy thereof to be served on the libellants' proctors within ten days after such deposition shall be sworn to.

New York, August 30, 1850.

E. H. OWEN,
Proctor for libellants,
C. B. M.

U. S. DISTRICT COURT,
Southern District of New York.

Part of the cargo of the Ship Richmond,
WILLIAM R. POST *and* JOHN SHERRY,
claimants,
ads.
WALTER R. JONES and others.

Same Court.

Part of the cargo of the Ship Richmond.
N. and G. HOWELL claimants,
ads.
WALTER R. JONES and others.

William H. Cooper, a witness produced, sworn, and examined "de bene esse" on the part of the several claimants above named, testifies as follows: I am a seaman, reside at Sag Harbor; I expect to leave this State *about* the fifth of September for California; I was, in the years 1848 and 1849, first mate of the barque Elizabeth Firth, and sailed from Sag Harbor on the 12th of July, 1848; went to the Pacific Ocean, from there to the Japan Sea, and thence to the Kamskatka Sea, all the time whaling.

We went, in 1849, into Behring's Straits, in the month of July; we had the best whaling that I ever saw; *I* know the ship Richmond; we ran in company into Behring's Straits, so were in sight of each other a good deal of the time; we lost sight of her in a fog the day she

went ashore; the first we knew of her being ashore the second officer of the Richmond came aboard our ship; we were just ready in whaling boats, seeing whales all around the ships, and Captain Winters, of the E. Frith, hailed the second officer of the Richmond just *before* he came on board, and asked him where the Richmond was, what the matter was; and he replied she was ashore; don't you see her? He pointed out where she was, and then we could see her quite plain; he came on board with his crew; he said the ship was cast away, and bilged in one hour after she struck; hoisted his boat up; I think he said the 2d day of August, between 3 and 4 o'clock in the *afternoon;* he said, very soon after she struck, they all left her; they went aboard again the sea went down, and got out some provisions; about the time he got through telling about this, the captain and chief officer of the Richmond came on board with a boat's crew; they said the ship was ashore full of water, and the remaining part of the crew was on shore rather uncomfortably situated; I am now speaking of the *captain* of the Richmond; he said he would like to have us take the crew on board, and that we need not whale any more; there was plenty of oil there that we could get at and get away as soon as possible; Mr. Reeves made the same remark; Captain Winters, of the Frith, replied to the captain of the Richmond, that he couldn't give it away, but must sell it; about this time the Junior was in sight, and *Mr.* Reeves, and the captain of the Richmond, and the captain of the Frith, thought it would be better to notify the captain of the Junior and see if he would take part of the crew; Mr. Reeves started from our vessel to the Junior; the next forenoon Captain Tinkham, of the Junior, came on board the Frith; Mr. Reeves staid on board the Junior; I didn't hear the arrangement between them; I was on board the Richmond *at* the time; I can't be sure whether I first went to the Richmond the 5th or 6th of August; it was the next day after Mr. Reeves and the captain of the Richmond first came on board; the Richmond was full of water and was on fire; had caught from the try works on the upper decks; her sails were all flying, some cut away from the yard, some with pieces cut out of *them;* the mizzen-mast was cut away before I got there; she was heading along shore broadside on, heading to the north; her rudder was partly unhung where she had been striking, and had stove in her stern frame; she was on a rocky iron-bound shore, on the west side of the Straits; they had stove several of the casks on deck, and let the oil run out; the first time I went on board we did nothing *but* put out this fire; we went back and got breakfast and went on board again; about 9 o'clock we cleared away the wreck, and got ready to take out some of the oil; the mizzen-mast was hanging in the lee-side by the lee-rigging; we cut that away; I think we took about one hundred barrels that day, as near as I can calculate; we could not tell exactly; some of the casks were not full; that was taken off the *deck*, near one hundred barrels of

oil; we went the next day again and got out not far from one hundred barrels and two boat loads of bone; I think it was two that day; we went again the next day, and it was so rough we lost part of the raft in towing it to our ship; I think there were five casks lost that day; this oil was taken at that time to save it; we did not know what hour the Richmond would break up; *I* could not tell exactly how much was taken for that purpose before the sale; I think between 250 and 300 barrels; I was on board the Richmond and didn't see it taken and stowed in the Frith; all I knew about the sale is, that a notice was given, and about this time the Panama came in sight, and they thought they had better notify Captain Hallock, to see if he did not want some of it; I think *the* Panama hove in sight the day before the sale; Mr. Reeves, of the Richmond, went on board the Panama; I was not present at the sale; after the sale, we took on board our vessel some oil, enough to make up, with what we had before, about six hundred barrels as near as we could tell, after we got it cleaned; according to the way we counted, the bone that we had got ourselves before in whaling, we had *altogether* from the Richmond about six thousand pounds; we left there the 12th of August, and took from the 5th to the 6th August to get this oil and bone on board, except the one hundred barrels we first took, all the rest we took from between decks and the lower hold; the Richmond was keeled over; the tide ebbed and flowed through her, and at high water, the casks that were stowed between decks on the lee *side* were under water; the getting this oil from between decks was not so difficult; that from the lower hold was very much so; not attended with danger; to get at the oil in the lower hold we cut away the lower deck-beams; it was immersed in water; there was a little motion to the vessel when there was a sea on; the masts worked up and down, and the keel was all ground out, as we supposed, *from* the rocking of the masts; at the time when the vessel was in motion, plank and wood and everything moveable were floating round; there was danger of injury to persons then working there, if they were not careful; very little danger; the persons working were obliged to stand in the water most of the time; they had to get wet or not get any out of the lower hold; the oil was rafted from the Richmond to the *Frith* after it was got out of the Richmond; if it was smooth weather that was easy, if it was rough it was a hard job; most of the time it was moderate weather; we had one day very rough indeed; we lost part of one of the rafts; we saved only four casks out of fifteen; I did not attend to the stowing away of the oil we took from the Richmond, except the last part, about one hundred and fifty *barrels;* we hove overboard from the Frith about as many as we got barrels of oil from the Richmond; some of casks were in shooks; we hove over also some bread and sails—from three to five thousand pounds of bread; I can't recollect the number of casks; during the whole time we were engaged in getting

this oil, there were plenty of whales; more than I ever saw on a whaling ground before; they were *very* easily caught; when we first saw the Richmond ashore, we lacked about eight hundred and fifty barrels to fill our ship; I think we could have brought two hundred and fifty barrels more home than we did; I think we could have taken whales enough to fill our ship before the month of August was out very easily, if we had not taken any from the Richmond; there were plenty there and easily taken; *we* could take them faster than we could boil them out; I mean that in that time we could have taken the whales, cut them in and boiled them out, and filled our ship; the first time I went on board the Richmond to take oil, the captain of the Richmond was there and staid about two hours; Mr. Reeves was there occasionally; he made his home on board the Junior; Capt. Winters of the Richmond came *frequently* and brought us our dinners, and helped tow the rafts after we got it rafted; I don't know who were on board the Richmond at the day of the sale; some of the crew of the Richmond helped hoist the oil up the first day; I was there about two hours; the second and third officers *was* there; no other officers while I was there; there was no danger of the masts working out as long as the rigging stood; I don't *think* there was any possibility of her being got off that place; if she could have been got off she could not have been repaired then, and made fit to go to sea; the cargo could have been landed with great trouble and expense; it could not be landed anywhere within two miles of where the ship lay, and if then with great difficulty; that part was inhabited only by natives; I went on shore once; there were huts there, made out of whale skins; could not call them houses; the captain of the Richmond was about working during the time we were taking the oil, apparently very well at that time; he was afterwards taken sick, and died on the passage to the Sandwich Islands; my opinion is, that ships could stay there till the middle of September; I heard Mr. Reeves, when he first came on board the Frith, say, that they had got out a *line* and kedge, and tried all they could to get her off, but it did not do any good; he said they had no idea they were near the shore; they were boiling at the time; at that time they first came on board the Frith; the Junior was the only other vessel in sight; she was whaling, laying to anchor, but her boats were off whaling; I never heard any of the officers of the Richmond making any objections to the proceedings; they were very anxious for us to get what we wanted, and get away; I did not hear any of the crew make any objections; we took Captain Winters, of the Richmond, and eleven of her crew away in our ship to the Sandwich Islands; I was not on board the Panama at any time while we were there; I did not see Captain Hallock at any time on board of the Frith; I don't think he was there at all; he might have been *while* I was at the Richmond; I saw his men at work getting the oil on board of the Richmond; they got their oil out of the lower hold at any hatch, the same as

the rest of us wherever they thought they could get it the easiest; they had the same trouble in getting it from the lower hold that we did; they rafted it to their ships in the same way; the situation of the Richmond kept growing worse all *the* time; at *the* time we left, there was not the least probability that she would ever be got off; none of the vessels were whaling during the time they were getting the oil out of the Richmond; I did not hear any person connected with the Richmond say that they thought or believed that the vessel, or any part of her cargo, could be saved; I heard Captain Winters, of the Frith, say, that if any person would give any more than he did for the oil *he* had already on board, they could have it; this was at the breakfast table; I believe Captain Winters, of the Richmond, was present at the time; it was on board of our ship; he further said he did not consider that oil on board ours, until he had bought it; this was the day of the sale—before the sale; Mr. Reeves said, when he came on board of us the first time, that he had been thinking of going in his boat with his crew *to* St. Lawrence Island, but had given that idea up, and was going, if we had not come in sight further up the Straits to the northward, to see if he could not see ships *to* get on board of, and get away from there. (All these conversations objected to.)

On *cross-examination.*

I had known the two Captain Winters ever since they were boys, say 15 years; ever since they had lived in our village; they were brothers; Jonas, of the E. Frith, *was* the most experienced whale captain; my own boat's crew went with me the first morning when I went on board the Richmond; they were Portuguese; the boat steerer's name was Thomas Sabina; the same men worked with me during the time I was engaged in getting out the oil; a part of the crew of the Richmond worked on board our ship while we were getting out the oil from the Richmond, but not a great deal; we did not *call* on them as we did on our own men; there were four sick men, all of whom we took on board our ship; the others worked very well; they seemed to be willing to work, to get away from there as soon as we could; we wanted to get home as quick as we could if our ship was full; we did not want to stay there after we had got what we could; we did not take any more oil coming home; I think it was the last *day* of September, that we got inside of the harbor of the Sandwich Islands.

Q. Why did not you bring the crew of the Richmond home?

A. The consul took up on his hands; we did not bring any men home under the consul's directions; I knew the cooper of the Richmond by sight; he came in the Panama, I think.

Q. Did you offer to bring any of the men home?

A. I don't know of any such offer; it *was* not for me to make it.

Q. Did any of them, to your knowledge, ask to be brought home?

A. Not to my knowledge.

Q. What else did your ship bring home or to the Sandwich Islands, which formerly belonged to the Richmond, besides oil, bone, and men?

A. We brought a boat to the Sandwich Islands; we left two of our purchase blocks on board of the Richmond, and brought two of the Richmond's *blocks* to the Sandwich Islands, and there Captain Tinkham gave us our blocks, and we gave him those that belonged to the Richmond; we gave him the boat, he paying the captain of the Frith for bringing her there; we brought two chronometers, two compasses, and a barometer; I believe we brought the medicine chest; we brought the chronometers, and barometer, and compasses to Sag Harbor; they were in charge of *Post* & Sherry, agents for the Elizabeth Frith; I took them ashore myself and put them in their office; I don't recollect of anything else; Capt. Winters' personal effects, I believe, were brought home in our ship; I don't know where the log-book of the Richmond is; I don't recollect ever seeing it. I did not attend at all to the unloading of the Frith; the bone from the Richmond was most of it put *together* with that which we had before on board the Frith; when we stored that which came from the Richmond, we put it into a bin, in with that which had before been taken on board the Frith, and it was mixed together; I kept the amount of what we had taken before, both oil and bone; we were not very particular; rather by guess work; I believe we had only two spells of taking bone from the *Rich*mond—twice; I think there was but five boat-loads altogether; I think there were two taken before the sale; I won't be sure whether two or three; I don't know as bone stows any closer in proportion to its value than oil; I don't know but it would better than common oil; I think a cargo of bone would be worth more than a cargo of oil.

Q. How many pounds of bone would your *ship* bring home for a full cargo, if she brought no oil?

A. I could not tell exactly; it is a hard matter to tell; she would bring 360 or 370 tons, I suppose.

Q. Where did you take the bone from which you took from the Richmond?

A. Some off the upper deck, some that was below on the casks between decks; we got some from a bin that was in between decks; that was cleaned and scraped; that was *down* in the water; we could not see it, but could feel it, and wade up to your middle in water, at low water, and get it; it was on the side of the ship that was heeled over.

Q. What proportion of that did you take?

A. Not more than one-sixth part of it, I think; the most of it was got afterwards.

Q. When do you usually clean the bone on taking whales first?

A. When we're boiling and storing, if whales *an't* plenty; but

when whales are plenty, after we get through we can clean it, after we get what oil we want, if we only have room to put it.

Q. Could you tell the casks of the Richmond from those on board the E. Frith by their appearance?

A. I might some of them, but not all; some of the Richmond's casks were emptied, or oil started out of them, into casks of the Frith; half-a-dozen of them or more; there *was* some we *started* into a tank and let the casks go.

The casks used on board of whale-ships contain several barrels; some more, some less; from ten barrels to nine; those that were emptied, I can't say whether they were large or small ones; I was not there when we filled the tank; we did not raft every day, only after we had got enough ready on board the Richmond; we got more out the *last* day than we did any day while I was there; I can't remember how many rafts we started from the Richmond for the E. Frith; I guess there *was* six altogether; I would not like to say positively; I have received my full share of oil and bone brought home by the E. Frith, including what was taken from the Richmond; I think I received the last on the 19th of July last; I received the first *the* 30th day of May, and the rest he was to pay in 20 days, and I think he did so; I sold him my share of everything in the ship for $2,050; what I had received before, ship's bills, to be deducted; I bargained no particular rate or price per gallon or pound; as to the bread and sails, we should have hove them overboard if we had caught whales, and perhaps the casks, as we had rather more than we wanted; we should *have* hove over everything we did not want for our own use; we did not get any other bread; we had bread in store at the Sandwich Islands; the bread was new when we sailed from Sag Harbor, and had kept in good order; we could have staid longer; I suppose we had bread for three months the way we eat it when we hove it over; it is not usual to take out the second time much bread that has been on *one* voyage; a few casks, perhaps, but it is not a general thing.

The Frith lay about three-quarters of a mile, from a mile to three-quarters of a mile, from the Richmond, while we were taking out the oil; we were a little the nearest of any of the ships; the Junior was close to us; the Panama half a mile or so further off; we lay about east from the Richmond; we all lay right off shore from where she was; I went ashore and buried a man there, stopping on board the Richmond, and then going about two miles north before I found a place to land; I landed at the same place where the Richmond's crew had been; I went about four o'clock in the afternoon, and it took, I suppose, until seven; the Richmond's men on shore came and helped us to bury the man; this was before *the* sale.

The casks from the lower hold of the Richmond were hoisted out by tackles rigged from her masts; they would not all come to the hatches; we had to haul them out of their places with boat

hooks, and cut away the beams and haul them along; the men on deck engaged in hoisting did not get wet; I got wet; I was down nearly all *the* time, breaking it out. It is sometimes a common thing for men engaged in whaling to get wet, if the weather is rugged; I cannot say how much the tide rose and fell there; we had been some 20 or 30 miles farther north than where the Richmond lay.

Being *further examined* on the part of the claimants, he says: The chronometers, barometers, and compasses *were* brought on board the Elizabeth Frith by Captain Winters, of the Richmond, with his things, and remained in his custody while he lived; the payment to me is a settlement in full for everything of that voyage.

WILLIAM H. COOPER.

Subscribed and sworn before me, this 30th day of August, A. D. 1850.

PHILIP MILLSPAUGH,
Commissioner of Deeds.

Filed June 4*th*, 1852.

U. S. DISTRICT COURT,
Southern District of New York.

Part of the CARGO, &c., of the SHIP RICHMOND, N. & G. HOWELL, claimants,
ads.
WALTER R. JONES and others.

It is hereby stipulated and agreed, by and between the proctors for the respective parties in this cause, that Frederick M. Hallock be examined as a witness, "*de bene esse*," in said cause, on the part of the claimants, *at* the office of the claimants' proctors, on the twenty-first day of June instant, at 12 o'clock at noon; that such deposition so to be taken, after being sworn to before a Commissioner of Deeds, or other officer authorized to administer oaths for the State of New York, or before a U. S. Commissioner, may be read in evidence on the trial or hearing of this cause, with like effect, subject to all legal objections, as if the same had regularly *been* taken before a magistrate, or officer of this court, upon an order and notice, &c., and that the same need not be filed, but may remain in the possession of the claimants' proctors, a copy thereof to be served on the libellants' proctor within ten days after such deposition shall be sworn to.

New York, June 21st, 1850.

E. H. OWEN,
Proctor for Libellants.

U. S. DISTRICT COURT,
Southern District of New York.

Part of the CARGO, &c., of the SHIP RICHMOND, N. & G. HOWELL, claimants,
ads.
WALTER R. JONES and others.

Frederick M. Hallock, a witness produced, sworn, and examined on the part of the claimants above named, testifies as follows: I am a mariner; am a captain of the vessel Panama; that vessel belongs to Sag Harbor; I was captain of that vessel in 1848 and 1849; she was engaged in the whale fishery in those years, in the Atlantic, and Pacific, and Behring's Straits, and Japan Sea, and other places; in the month *of* July I was in the Anadir Sea, and in August in Behring's Straits; I knew the ship Richmond; I saw her in Behring's Straits, on shore, bilged, rudder gone, mizzen-mast gone; I was standing in St. Lawrence Bay on the eighth day of August, 1849, or thereabouts, whaling, when I first saw her; I first saw the ship on shore, but did not know her name; the mate of the Richmond came off to me, and informed me that the Richmond was on shore; his name was Charles H. *Reeves;* he said the ship was ashore, bilged; wanted me to come and take part of the crew, that she and the cargo were to be sold the next day, and wanted me to attend the sale, and that there would be a chance to fill my ship up; I had at that time on board my ship thirty-two hundred barrels of oil.

Q. What did the mate say relative to the Richmond's going ashore, and the situation she was in?

(Objected to as incompetent.)

A. *He* told me she was ashore in a thick fog; that she lay on a bed of rocks full of water; he didn't say anything more about her; he said they had carried out a kedge and tried to heave her off, but it was impossible to start her; at this time the Elizabeth Frith and the Junior were in sight, no others; I did not go on board either of these vessels that night; I saw a boat's crew belonging to the Richmond; they were with the mate; I saw no other *person* connected with the Richmond, and none connected with the other vessels that night; it was in the evening just at sundown, that I saw the mate of the Richmond, when he came on board; I went on board the Richmond the next day; she was on shore on a ledge of rocks right opposite a high bank at the mouth of St. Lawrence Bay; she was full of water; rudder gone; mizzen-mast gone, and the rigging a good deal cut away; *sails*, a great many of them, were hanging loose; she was keeled over on her side, so that the water stood nearly up to the upper deck at high water; on the lee

side next the shore; I saw a notice of the sale nailed up against the main-mast of the Richmond; sale of the ship and cargo; I saw Captain Winters, of the Richmond, and Captain Winters, of the Elizabeth Frith; Mr. Carr, mate of the Junior; Mr. Reeves, mate of the Richmond; Captain Tinkham, of *the* Junior, went on board with me; there were others there; I didn't know their names; I think it was the eighth of August, civil time; in the first place, Captain Winters, of the Richmond, asked Mr. Carr, of the Junior, to act as auctioneer; the oil was put up in lots, with a proportion of bone; Captain Winters bid off the first lot at $1 a barrel; he was to take what he wanted to fill his ship up; it was supposed about 600 or 700 barrels; Captain Tinkham bid off the next lot at 75 cents per *barrel*, and I bid off the next at 75 cents per barrel; I wanted about 580 barrels; this was not the number specified; there was plenty of oil on the ship; I have not an account here of what I bought; there was about 20,000 gallons, gross guage, subject to a deduction of 12 per cent. for quarter guage; this was not proclaimed at the sale, but the next day by Captain Winters; about the third day after the sale, I commenced taking the oil I had purchased; I had *a* whale on board boiling out, and that is the reason I didn't take it before; I was occupied in taking the oil up to the sixteenth of August; the oil I took was in the lower hold of the Richmond; the oil was so wedged in that we were obliged to cut away the lower deck beams to float it out and then haul it up from the hold with boat-hooks; I took it all from the lower hold of the Richmond; I didn't take it out of the vessel with boat-hooks, but hoisted it out; I arrived here March 24th, 1850; Mr. Sayre came with me to New York; never heard him make any complaint or objection to the sale and proceedings at Behring's Straits; during all the time I was engaged in taking the oil I purchased to my ship, I discontinued whaling; the other vessels discontinued whaling also.

Q. What was the conduct of Captain Winters, of the Richmond, in the proceedings you have mentioned, active or otherwise?

A. *He* was active, as far as I could see.

Q. What did Captain Winters, of the Richmond, say to you relative to the accident to the Richmond?

A. The day he came on board my ship, he was sorry the accident had occurred; he judged himself far enough from the land; he supposed he must have been very much currented; there was no agreement made as to settlement *with* Captain Winters; he proposed to meet me at the Sandwich Islands; Idid not meet him there; he never arrived there; while I was there, the situation of the Richmond became worse; her masts began to work, so I supposed they were through her.

Q. Do you know anything of the destruction by the natives of any part of the vessel, furniture, or cargo of the Richmond?

A. I did not see anything of the kind.

Q. *Do* you know anything of the habits of the natives there as to the destruction of vessels or their cargoes, that may happen to be wrecked or cast on shore there?

A. I know that they did steal from me cooper's tools and hooks, and they would steal iron when they could get hold of it; there was a high bluff where the Richmond went ashore, about 30 feet.

Q. Would it have been possible to take her cargo on shore at that place?

A. *It* would not at that place; they might tow it around the bay, some 2 or 3 miles, and land it there; the latitude of this place is 65° 28′ north.

Q. How much longer could you have remained in that vicinity whaling before the season closed?

A. I think to the first of September.

On cross-examination on the part of the libellants:

I am a native of Quogue, Long Island; I have known Captain Jonas Winters, *of* the Elizabeth Frith, since 1832; I never saw Captain Winters, of the Richmond, until about November, 1848, when I met him at the Sandwich Islands; I did not see much of him there; I saw him two or three times; I sailed from Sag Harbor in the Panama, in September, 1847; she was owned by Nathan and Gilbert Howell and Lewis Howell, according to the register; they put me in as master; I am still attached *to* the same ship, and the same owners, so far as I know; Mr. Gilbert Howell is now present; Captain Jonas Winters is also present; my share on board the Panama, on that voyage, was to be 1-22d; I do not consider myself bound to account with them in case of recovery in this suit; I have settled the voyage and given a receipt; there has no sealed instruments passed between us. I was allowed a portion *of* all I had on board. (Libellants' counsel here states, that it appears the witness is interested, and that he shall avail himself of that objection to his testimony.)

Hong Kong, in China, was the last port I was in before coming to the place where the Richmond was in; I reported there 1,400 barrels on board. I left there on the 5th January, 1849; we did not take any whale before entering the *Japan* Sea, sometime in February; we took 7 whales, about 400 barrels of oil; we left that sea about the 20th May, and went then between Behring's Islands and the main land, and next up Behring's Straits; we took the first whale there on the 12th of July; we had taken about 450 barrels after leaving the Japan Sea before the 12th of July; we went north as far as the islands in the upper entrance of Behring's Straits; *the* north part of the Straits; we *was* the farthest north about the last of July. I did not write home after leaving Hong Kong. I saw the log-book of that voyage last at Sag Harbor last Monday, in the custody of the Messrs. Howell, the claimants.

(Libellants' counsel asks for the log-book, and is informed that it is not in New York.)

The Elizabeth Frith also sailed from Sag Harbor. I first saw her at Behring's *Straits*, when I got under weigh and stood into the bay on the occasion of first seeing the Richmond—that is, before seeing, on the morning of that day, I was anchored about 15 miles from the land. I had been at anchor then 48 hours; merely tripped the anchor; had been at anchor most of the time 4 days; the last whale I caught was 2 days before seeing the Richmond; it was all cut in when I saw the *Richmond;* when I saw her I had about 130 barrels of blubber in the ship, not boiled out; the blubber is counted by the number of barrels of oil it is supposed to make.

Q. At that season, and with your ship so far up, how much blubber would you take on board before stopping to try out?

A. 400 barrels without stopping, if I could get it.

Q. How large a crew had you?

A. 32 men; I used 4 boats.

Q. *When* 4 boats were out, did you proceed with your try works?

A. Generally, if it was good weather; if it was rugged weather, I could not work the ship with so few men; sometimes used only 2 or 3 boats.

Q. Would stormy weather interfere with or delay your try works, so as not to try out so fast?

A. In stormy weather we could not boil out so fast

Q. In stormy weather could you, with safety, in that place, hold on to the large whales until you could cut them in?

A. We don't generally have them alongside in stormy weather; it don't take long to cut them in; not more than 5 hours. I have taken one in stormy weather after I was under weigh.

Q. Where did you see Captain Jonas Winters, of the Frith, after you came in sight of the Richmond, and before the sale?

A. *I* think he came alongside of me in his boat. I am not certain; I don't think he came on board then; I saw him at the sale; I had seen him before, 2 or three days before I heard of the loss of the Richmond. I did not go on board of his vessel; never in my life.

Q. Did or not you and Captains Tinkham and Jonas Winters consult together before the sale?

No, sir; Capt. Tinkham went on board the Richmond with me; Capt. Silas *Winters* went in his own boat.

I was on board the Richmond, I think, not to exceed ten or fifteen minutes before the sale took place. I did not bid at all for the first lot that was put. I was told before the sale, I think, that E. Frith had already some of the cargo on board. I don't know of that; I think Mr. Reeve told me when he came off the evening previous.

(Claimants' counsel objects to any evidence in relation to the

conduct or transactions of the captain, or other persons connected with the Elizabeth Frith, unless it is stipulated by libellants' counsel that this deposition be read in evidence in behalf of the claimants, Post & Sherry.)

I did not bid at all for the second lot that was put up.

Q. When those lots were bid off, did you understand or know that the masters of the E. Frith and Junior had got all, or were entitled to all, that they wanted to fill up their ships?

(Understanding objected to.)

A. They *was* to have enough to fill their ships up, if they could get it out; there was plenty of oil there, if they could get it out; there was no limit to the quantity they were entitled to take; they were to fill their ships at prices stated.

Q. Did there any one bid against you when the 3d lot was put up?

A. *No*, sir.

Q. Was there any one else who could have bid, and had any means of taking the cargo?

(Objected to.)

A. The Richmond's crew could have bid if they liked; there was no one else there but the masters of the three ships.

Q. Was the Richmond herself and her boats and materials to be sold at the same time?

A. They were.

Q. Were they sold?

A. They were, to Captain Tinkham, of the *Junior*, for $5.

Q. Did you bid against him?

A. No, sir; he bid against Capt. Jonas Winters. I did not bid; I did not want it.

Q. How much did Capt. Jonas Winters bid?

(Objected to as before.)

A. One dollar.

Q. Did that include the boats?

A. I understood it so, and the sails that were ashore; the boats were ashore too.

Q. Did it include the chronometers and compasses?

A. I did not think it included the *chronometers*. I believe there were two; they are generally considered master's property; at least I thought so; nothing was said in particular about them at the sale; the compasses I did consider belonged to the ship. I did not see any there. I supposed the ship and furniture, and that belonged to her, was to be sold.

Q. Was not a single boat with its oars worth more than $5.

A. Not to them that did not want it; *if* I had no means of carrying them away, they were not worth having.

Q. How many of your boats did you take as far as the Sandwich Islands, or take home?

A. Six.

Q. Did you take any of the Richmond's?

A. Yes; I took one for Mr. Sayre, which Capt. Tinkham gave him.

Q. Did you take anything else of the materials or furniture of the Richmond on board of your vessel?

A. Nothing.

Q. *Were* all your sea-boats new and in good order?

A. Not all new; in very good order except one; two new ones; the one excepted was a middling good boat; one that it would do to whale with.

Q. Was not the boat that Reeve came to our ship in worth more than $5 more than your poorest boat?

A. I don't know; I never examined her; I don't know whether she was worth five dollars or not.

Q. *When* you bid off your lot, did you or not understand that the boats were to be sold?

A. I did; the ship and all her apparatus.

Q. Did the crew of the Richmond help your men to get out the cargo that was taken to your ship?

A. Part of the crew did—those that I took to the Sandwich Islands.

Q. How came they to help you?

A. They were in duty bound to; obliged to help; and, moreover, they were willing *to* do so; there was no compulsion; according to the laws of the United States, I think, a man who comes aboard another vessel to be brought home from a foreign country, he is obliged to work—do duty; they came aboard and asked for a passage, and said they were willing to work and help get away as fast as possible. I went to the Richmond twice; once at the sale, and again when I had finished getting *the* oil out; I staid, I suppose, about half an hour each time; I saw Capt. Richmond at the sale, and once afterwards; that was all; the last time he took dinner aboard of my ship; at these times when I saw him he was well as far as I knew; before I left the number of barrels taken into my ship was not adjusted between me and Capt. Richmond, or any one acted for him; *he* left the ground before I had got in all the oil; the Elizabeth Frith left first. I left some two or three days after her. I came away before the Junior. I never, myself, paid anything for the oil and bone which I took on board the Panama. I left the neigbhorhood of the Richmond as soon as I got full. I got full as soon as I could, and then I came away.

Q. Did *you* or not hasten away as *soon* as possible, after getting the oil on board your vessel?

A. Yes, sir; I did not carry as much sail as I might; I was in no particular hurry; there was no cause for staying there, and so I left.

Q. Have you not sworn in an affidavit made by you in relation to this matter, that you came away as soon as possible, owing to the lateness of the season and fearing gales of wind?

(*Objected* to as not sufficiently specific as to the time, place, and occasion of making the affidavit.)

Libellants' counsel adds: "In an affidavit sworn to on 30th May, 1850, before A. Wright, a Commissioner of Deeds in this city."

(Question now objected to as improper and irrelevant.)

A. I stated that I left on account of lateless of the season—there might *be* gales of wind.

Q. Was it late in the season for that place at the time you left, or not?

A. I supposed it to be late; there never had been any one up there before; never but one whaling ship that I ever heard of; and about the first of September I considered the time to leave the whaling ground.

Q. How far south did the whaling ground go, which you considered *it* time to leave about the first of September?

A. I meant to get oil out of the Straits; when the season broke up is when the whales leave the ground; I did not know when they would leave.

Q. How far south does what is called the northwest coast whaling ground extend?

A. The whaling ground on the northwest coast commences about 32 deg. north.

Q. *How* late in the season, having reference to the weather, would you stay north of 60 deg. north latitude?

A. I should whale there until the 15th of September.

Q. How much did the tide rise and fall where the Richmond was?

A. I did not ascertain at all; I suppose not more than 4 or 5 feet, by the looks of the shore; I did not land at all.

Q. Where did you lose the cooper's tools and iron hoops?

A. At the place where the Richmond was ashore—on the decks of my vessel, where the cooper was using them.

Q. How large is the Panama?

A. 465 tons; a flat ship.

Q. Who sold the cargo brought home by the Panama?

A. I don't know; I presume Mr. Howell; Mr. Gilbert Howell was here at New York; I was not here; I don't know anything about it.

Q. How could the casks of the Richmond *be* distinguished from those of the Panama, at the time they were sold here?

A. They were, most of them, different shaped casks, and had guage marks on; they were different built casks from any I have seen.

Q. In what condition were the empty casks that you hove over?

A. They were in shooks; not set up as casks; I judge of the number thrown over by what I took in the *ship* before sailing; I

knew how many shooks I had on board; had a list of them; I did not know how many casks I had set up.

Being *further examined* on the part of the claimants, he says: I am in no manner interested in the event of this suit; I have been settled with in full for that voyage; I have paid my proportion of the money for the oil brought in my *settlement* with the owners; it has been charged to me by them in that settlement; I did not know of any particulars stated at the sale of the ship Richmond beyond this, that the ship and the furniture were put up and sold; there was no part of the ship or furniture that I was anxious to purchase; I had no room for anything and didn't want it; there was not the least probability *that* the ship would ever be got off; it was an impossibility almost; I intend to leave the city to-morrow morning for Quague, Long Island, and from Sag Harbor, next Monday or Wednesday, on a voyage to California.

FREDERICK M. HALLOCK.

Sworn before me, this 21st June, 1850.

PHILIP MILSPAUGH,
Comm. of Deeds.

U. S. DISTRICT COURT,
Southern District of New York.

Part of the CARGO, &c., of the SHIP RICHMOND, WILLIAM R. POST and JOHN SHERRY, claimants, *ads.* WALTER R. JONES and others.

I hereby consent that the within deposition of Frederick M. Hallock may *may* be read *in* evidence on behalf of the claimants above named, or by libellants, with the like effect, subject to all legal exceptions, as if the same had been regularly and formally taken in said suit, according to the rules and practice of this Court.

N. Y., June 21, 1850.

E. H. OWEN,
Proctor for Libellants.
STEVENS & HOXIE,
Proctors for Claimants.

Filed June 4th, 1852.

UNITED STATES DISTRICT COURT,
Southern District of New York.

Part of the CARGO of the SHIP RICHMOND, N. & G. HOWELL, claimants. *ads.* WALTER R. JONES and others.

Same Court.

Part of the CARGO of the SHIP RICHMOND, WILLIAM R. POST & JOHN SHERRY, *ads.* WALTER R. JONES and others.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Nathaniel B. Hoxie, of said district, being duly sworn, saith, that he is one of the proctors for the several claimants above named in the above cause. That John P. Carr, of New Bedford, in the State of Massachusetts, is a material and necessary witness in said cause for all the claimants above named, as deponent has been informed by said claimants, and verily believes. That said Carr has arrived in the *city* of New York this day, and, as he has informed this deponent, intends to return to New Bedford, his place of residence, this afternoon, and on the fourteenth day of September instant, will leave said New Bedford on a whaling voyage to the *Artic* Ocean.

NATHANIEL B. HOXIE.

Sworn to before me, this 12th day of Sept., 1850.

GEO. W. MORTON,
U. S. Comm'r.

On the above affidavit be examined, *de* bene esse, before me, and notice of the time and place given to E. H. Owen, esqr., proctor for the libellants, Sept. 12th, 1850.

GEO. W. MORTON,
U. S. Comm'r.

Filed Sept. 12, 1850.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this twelfth day of September, in the year of our Lord one thousand eight hundred and fifty, I, George W. Morton, a commissioner, duly appointed by the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed February 20*th*, 1812, and the act of Congress, entitled "An act, in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States,'" passed March 1st, 1817, and the act, entitled "An act to establish the Judicial Courts of the United States,"

passed September 24th, 1789, did call, and cause to be, and personally appear before me, at my office, at the United States Courts, in the city of New York, in the said southern district of New York, in the State aforesaid, John P. Carr, to testify and the truth to say, on the part and *behalf* of the claimants, in a certain suit or matter of controversy, now depending and undetermined, in the District Court of the United States, for the Southern District of New York, at the city of New York, in the district aforesaid, wherein Walter R. Jones and others are libellants against the cargo of the ship Richmond, N. & G. Howell, claimant of one portion, and Post & Sherry, claimants of the residue libelled.

And the said John P. Carr, being about the age of *thirty*-one years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said John P. Carr, and he did thereupon depose, testify, and say as follows, viz:

That he is a mariner, and belongs to Fairhaven, Massachusetts, more than 100 miles from the city of New York; I am bound on a whaling voyage to the *Artic* Ocean; the time for sailing is fixed *for* Saturday next, to sail from New Bedford; in the month of August, 1849, I was first officer of the ship Junior, of New Bedford, then whaling in Behring's Straits.

Did you know the ship Richmond? I did.

Did you see the ship Richmond in Behring's Straits at that time? I did; I saw her on shore in Behring's Straits at that time.

State when and how you first knew that she had gone on shore?

I was off, fast to a whale; it was foggy at the time; shortly after when the fog lit up, I discovered the ship ashore; at 12, I got alongside of the Julia with a whale, and found Mr. Reeves, first officer of the Richmond, on board, who informed me of the wreck of the Richmond; I think he told me it was on the 2nd of August that she was wrecked; that the ship then *was* full of water; he told me he thought it impossible to *to* get the ship off; he said that every effort had been made to save the ship, but without avail; this, I think, was on the 6th of August; on the 7th of August, I saw the captain of the Richmond for the first time, on board the ship Julia; I heard him speak to Captain Tinkham and Captain Jonas Winters, about the wreck; that she had bilged, and was *full* of water, and that he and his crew had abandoned the ship; he then further stated, in my hearing, that he should sell the ship and cargo, and all that belonged to her, at public auction; I heard no more at that time, as he left the ship; I saw him again in about two hours afterwards, on board the Julia; he came on board and stuck up an auction notice for the sale of the ship Richmond and *cargo* on the 8th of August; he then left the ship; I did not see him again until the morning of the 8th; then he requested me to effect a sale of

the ship Richmond and cargo by selling it at public auction; I told him I could not do it, unless Capt. Tinkham would allow me the privilege of so doing; Capt. Tinkham then said I could act as I saw fit; I then told Capt. Winters, of the Richmond, I *would* act as auctioneer; we then proceeded to the wreck; I examined her situation at that time; I found the ship full of water, and also saw oil floating about in her; her mizzen-mast was gone, and rudder broken; her larboard and anchor was gone and laid under the ship. How was she situated as to the shore? She laid broadside on the shore, headed to the northward; it was a rocky shore, and *iron*-bound coast, on the west side of the Straits, near St. Lawrence Bay. Captain Winters, master of ship Richmond, then requested me to effect the sale of the ship Richmond and cargo, and all that belonged to her, either on shore *or* wheresoever it might be found; Captain Winters, of the Richmond, then stated to those present, that the oil would be so sold in lots, from one to one thousand barrels, as purchasers *might* want; he also stated that a proportionable part of the bone would be sold with the oil; he also stated, that there would be a discount of ten per cent. on the oil that was stowed down by each purchaser; the 10 per cent. was for the quantity of oil for leakage; Captain Jonas Winters, of the Elizabeth Frith, stated that he had taken three hundred barrels, or thereabouts, of oil from the wreck, previous to that *day*, by consent of Captain Winters, of the Richmond, to save it; he then stated, if any one would give more than he did, that the oil was easy to be got at, being mostly on deck of the E. Frith; I then offered the first lot for sale, from one to one thousand barrels; Captain Jonas Winters bid one dollar a barrel, with a proportionable portion of bone to the amount of oil taken; after dwelling some time upon the *bid*, it was sold to Captain Jonas Winters at one dollar per barrel; the amount taken by Captain Winters, according to his statement, was six hundred barrels; the second was then offered, and 75 cents per barrel was bid by Captain Tinkham, of the ship Julia; after dwelling upon the bid some time, it was sold to him for seventy-five cents per barrel, with a proportionable quantity *of* bone to the amount of oil taken, and the amount of oil taken by him at that bid was about eight hundred barrels; the third lot was then offered; Capt. Hallock, of the ship Panama, bid 75 cents per barrel, and after dwelling upon his bid for some time, it was sold to him for seventy-five cents per barrel, with a proportionable quantity of bone to the amount taken; the amount of oil *purchased* by him I do not know, as I did not see him again; I then offered the ship for sale, with everything pertaining and belonging to her, whether on shore or wherever it might be found; the ship was put up by me, and bid off by Captain Tinkham, of the ship Julia, for the sum of five dollars; that ended the sale of the ship Richmond and cargo. Who were present at that sale? Captain *Philander* Winters, Captain Jonas Winters, Captain Silas Tinkham, and Captain

Hallock, Mr. Reeves, and from ten to fifteen of the crew of the Richmond; also, the 2d mate of the Richmond; there was also five of the ship Julia's crew there, five or six of the Panama's crew, and five or six of the E. Frith's crew there. Were those officers of the Richmond, that you have mentioned, all there during the whole time of the *sale?* He says they were. Did you see any other notice of the sale, except on your ship? Yes, on the wreck. Did any of the officers or crew of the Richmond make any objection to the sale or proceedings? I did not hear any objection made by any of them. Were you afterwards on board the Richmond? Yes, frequently; I worked to get all the oil out purchased by Captain Tinkham, of the Julia; we had to cut away the *lower* deck, standing up to our middles in water, and at the peril of a man's life. Why was it perilous or dangerous? In the first place, the ship was full of water, and wood, and casks, and the water very cold, which would benumb a man so that he could not use his arms. Were those articles which you have mentioned loose, floating around? They were, my own life was in *peril* there. State how? I fell in, while in the act of cutting off a beam, and I became so benumbed and entangled with the drift-wood and casks, that I could not get out without assistance. Did the other persons getting out the oil for the other vessels meet with the same difficulties? They did. Did the tide ebb and flow through this vessel? It did. Did her situation and *condition* improve or grow worse? It grew worse; the ship was working extremely hard all the time. What vessels were there when you first discovered the Richmond ashore? The Elizabeth Frith was in sight; none other that I saw. When did the Panama arrive there? She arrived the night previous to the sale of the ship Richmond; I did not see the Captain of the *Panama* until the morning of the sale. During the time you were getting the oil, how was the whaling? First rate; I never saw better in my life; they were easily taken. How long would it have taken to have taken whales enough to have filled your ship? I think we could have taken whale enough to have filled the ship while we were employed at the Richmond; I have no doubt of it at all; the oil after being taken out of the Richmond, was stowed by boats to our ship in rafts; that was by binding 15 or 20, or more casks together, and so towing them to the ship; it was very hard work, and very rough at times.

Could the Richmond's cargo have been landed on shore at the place where she lay? It could not.

Why not? It not being a fit place, it being an *iron*-bound shore.

Could the Richmond have been got off and made seaworthy at that place? She could not have been got off and made seaworthy there, or at any other place.

Where there any inhabitants there that would have repaired the Richmond, or assisted in so doing? There were not.

Where there any civilized persons there? They were partly civilized; the natives were kind to us, but we *could* not understand their language, and could only communicate with them by signs, and with difficulty at that.

Where did Mr. Reeve stay while you were there? On board the ship Julia; Mr. Cherry, the 3d mate, and two boat's crews of the Richmond, staid on board the Julia; they, together with the boat's crews, helped to save the oil taken on board the Julia from the wreck; Mr. Reeves and *his* boat's crew, assisted us in getting the oil out from the Richmond; the Richmond was not full of oil when she went ashore; she was reported by Captain Winters to want one whale; we left there the 20th of August, and went to Wahoo, one of the Sandwich Islands; Mr. Reeves went with us to the Sandwich Islands.

What was the condition of the Richmond when you left? She was in bad condition, breaking up.

Was there any probability she could be got off? No; I do not think she could hold together another week; I arrived at New Bedford on the 1st of March last.

Have you at any time since that seen the owners of the Richmond? I have not.

Do you know S. & S. Willetts, of this city? I do not.

Have you been paid for your services as *auctioneer?* I have.

Who paid you? I believe Mr. J. S. Jones, of this city; I believe him to be one of the owners of the Richmond; it was paid to me in New Bedford.

At the time you were taking the oil from the Richmond, were you whaling? We were not; our whole attention and that of the ship's company was devoted to taking the oil fron the Richmond.

What was the condition of the bone *you* got from the ship? It was part of it gummed, and part of it not; what we got was from the run of the ship.

How was that taken by the vessel? Some was gummed, and some not.

What other vessels came in sight before you left? A French ship came in sight the day before we left, no other vessel.

Did Mr. Reeves, or any of the persons that went with you to the Sandwich *Islands* make any objections to these proceedings? They did not.

You have said that part of the Richmond's crew assisted in getting the oil out, did they do so willingly? They did.

Did the three vessels come away about the same time? There was some difference in their sailing; the Elizabeth Frith left first, the Panama next, and the Julia the last.

JOHN P. CARR.

Mr. Moore, of counsel for the libellants, does not cross-examine

the witness. The deposition being read to the witness, he subscribed the same in my presence, September 22, 1850.

GEO. W. MORTON,
U. S. Comm.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George W. Morton, a commissioner, duly appointed by the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending *in* the Courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the Judicial Courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the witness is material and necessary in the cause in the caption of the said deposition named, and that he is bound on a voyage to sea, more than one hundred miles from the city of New York, the place of trial.

I further testify, that a notification of the time and place of taking the said deposition signed by me was made out and served on the proctors for the libellants, to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit.

I further testify, that on the 12th day of September, A. D. 1850, I was attended by the proctors for the libellant and claimants, and by the witness, who was of sound mind and lawful age, and the witness was by me carefully examined and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statements, and after carefully reading the same to the witness, *he* subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the Court, for which the same was taken.

I further certify, that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof, I have hereunto set my hand and seal, this twelfth *day* of September, in the year of our Lord one thousand eight hundred and and of the independence of the United States the seventy-fifth.

GEO. W. MORTON,
U. S. Commissioner Circuit Court of the U. S.,
For the Southern District of New York.

(Endorsed.)

Vol. 8, No. 228.

UNITED STATES DISTRICT COURT,
For the Southern District of New York.

The CARGO of the SHIP RICHMOND
ads.
Walter R. JONES and others.

Deposition on the part of the claimants, taken before George W. Morton, United States Commissiouer, on the twelfth day of September, 1850.

STEVENS & HOXIE,
Proctors for Claimants.

Filed the 7th day of March, 1851.

U. S. DISTRICT COURT,
Southern District of New York.

Part of the CARGO of the SHIP RICHMOND, N. & G. HOWELL, claimants,
ads.
Walter R. JONES and others.

It is hereby stipulated and agreed, that by and between the proctors for the respective parties in this cause, that Augustus E. Halsey and Thomas Sabina be examined as witnesses *de bene esse* in said cause, on the part of the claimants above named, at the office of the claimants' proctors, on the seventeenth day of July instant, at 10 o'clock in the forenoon; that such deposition so to be taken, (the witnesses submitting to a cross-examination,) after being sworn to before a Commissioner of Deeds, or other officer authorized to administer oaths for the State of New York, or before an U. S. Commissioner, may be read in evidence on the trial of this cause, with like effect (subject to all legal objections) as if the same had regularly been taken before a magistrate or officer of this Court, upon an order and notice, &c., and that the same need not be filed, but may remain in the possession of the claimants' proctors, a copy thereof to be served on the libellants' proctor within ten days after such deposition shall be sworn to.

New York, July 17, 1850.

E. H. OWEN,
Proctor for Libellants.

U. S. DISTRICT COURT,
Southern District of New York.

Part of the cargo, &c., of the Ship Richmond, N. and G. HOWELL, claimants,
ads.
WALTER R. JONES and others.

Augustus E. Halsey, a witness produced, *sworn*, and examined, *de bene esse*, on the part of the claimants in this cause, testifies as follows:

I am a sea-faring man, and live in Southampton, Long Island; I was in 1848 and 1849 second mate of the barque Elizabeth Frith, engaged in whaling; in the month of August we were in Behring's Straits, whaling; I know the ship Richmond; we were in company with her in Behring's Straits near the Asiatic coast daily, I *should* think, until the 12th of August, we left her; we lost sight of her before this about the first of August, in a fog; when we next saw her after this she was a wreck, lying on shore, on the Asiatic side of Behring's Straits, near the mouth of St. Lawrence Bay; Mr. Sayre, the second mate of the Richmond, first communicated to me the intelligence concerning her going ashore; he came on board the Elizabeth Frith; the captain *of* the Frith asked him how it happened their getting ashore; he said she went ashore in a thick fog, and they considered her a wreck; he said they had made attempts to get her off, by carrying out a kedge and hawser, and they had not succeeded; that the vessel was of no use to them, nor the oil on board of her; it was no use for us to whale any more, as there *was* 3,600 barrels; that we had better go and fill our ship than to kill up other whales; *he* said they would give us the oil, as it was of no use to them; the captain of the Frith said to Mr. Sayre, "you can't give away that oil; it should be sold, if it did not fetch but a penny a barrel;" we then discovered another boat coming, in which were the captain and mate of the Richmond; that mate's name is Reeves; they came on board; I did not hear what the captain of the Richmond then said; I heard Mr. Reeves say, "the *Richmond* is ashore with 3,600 barrels of oil, and it was of no use for us to whale any more, because there was plenty of oil, and it was as well to take that as to kill other whales; all he wanted was to get away from there;" he was about fixing his boat when he discovered us, to go up the Straits to look for some vessel; he said they had left the Richmond, and had their things all on shore; the Junior was the only vessel in sight *at* this time; she was lying to an anchor, with her boats fast to a whale; that morning made sail, and steered for the Richmond; came to anchor; then it took us till the next morning before we got in; we staid there seven

days; we were employed in getting oil from the Richmond, oil and bone; I was on board the Richmond one day while we were getting the oil; it was a very hard job to get that oil, owing to her being very *full* of water, rolling very heavy, and the hold being full of drift wood, joists, staves, &c.; we got at the oil in the hold by cutting away the lower deck beams; that was the only way we could do it, and then only at low water; we considered it dangerous, in danger of falling into the holes we cut through to let the oil float up; we couldn't at all times see these holes, the water being over them; the oil was, after *being* got out of the vessel, becketted, and rafted, and towed to the Frith by the boats; that was difficult on account of a strong current and a chop sea; the Panama arrived there the evening of the 7th August, the evening before the sale; did not see the captain of the Panama that evening; I never saw him; don't know that he was ever on board of the Frith; I never saw him there; the crews of the other vessels were also getting oil *from* the Richmond while we were; I mean while I was on board the Richmond; persons from both the other vessels were there on that day; they got the oil from the same place, in the same way that we did, and met with the same difficulties and dangers; the Richmond, when I was on board of her, was laying in rather a dangerous situation; she was likely to go to pieces at any time by thumping on the rocks; *her* masts I saw working; her fore and main-masts working up and down; her mizzen-mast was cut away and gone; I didn't examine the rudder; don't know about that; there was danger of the other masts going overboard at any time, while I was there; I think that by the working of the masts she must have worked on the bottom, and there was some chance of there being a hole through her bottom; there was no *probability* that she could ever be got off, not in that place; if she had been got off, she could not have been repaired there; the shore there was rocky; the oil could not have been landed at any place that I saw there; at times there was a good deal of surf there, and some surf all the time; I saw a notice in writing nailed against the main-mast of the Elizabeth Frith, stating that the Richmond oil and, I think, the wreck, I won't be positive, would be sold at auction on the 8th of August, on board of the Richmond; I was not present at the sale; don't know anything about that; I saw the notice on the Frith the day before the sale, the 7th August; we threw our casks to make room for the oil from the Richmond; shooks that were in casks, and bundles of shooks; some casks of bread and some of water; we considered *the* whaling at that time good; there were plenty of whales around, could see them every day; we would have had to take four whales to fill our ship, before we got the Richmond's oil; we could have taken these four whales at this place in a week, and got them on board; we left Behring's Straits on the 12th August, and sailed for the Sandwich Islands; I can't say what the condition of the Richmond was when we left; I saw Mr. Reeves go *on* board

the Junior from our vessel, when he and the captain first came there; Mr. Reeves was on board the Richmond the day I was there; I think Captain Winters was not on board that day; he came and helped us tow a raft of the oil after we got it out of the Richmond; Mr. Reeves did not seem to be doing anything particular that day; I didn't hear him make any objections to what was going on; I have seen him since; never heard *him* make any objections to what had been done; I expect to go to sea next Monday, on a whaling voyage.

On *cross-examination:* I expect to sail under Captain Winters, in the brig Charlotte, in Mr. Post's line, of the late firm of Post & Sherry; I came down with Captain Winters to New York, and heard his testimony yesterday; I can't say whether it was two or three days before we left the Richmond that *I* was on board of her; I can't say whether it was one or two rafts that we received on board the E. Frith after I was on board of the Richmond; I think it was but one; I can't recollect how many rafts in all we received from the Richmond on board of the E. Frith; the tide in that high latitude rose and fell a considerable; I should think, by the position of the Richmond, that it rose and *fell* from 4 to 5 feet; I should think it was about 10 or 11 o'clock on that day that it was high water; I went on board about 8 o'clock in the forenoon, and left her about 7 in the afternoon; I was there at low water; the Richmond lay still at low water nearly; there was a little motion to her at low water, very little; we hoisted out the oil from the hold by means of tackles rigged to pendants from the masts of the Richmond; there was *not* much wind the fore part of that day I was at the Richmond, the latter part there was quite a breeze; I don't know as I can tell which way the currents ran there; it was somewhere from the northward and eastward to the southward and westward; they were changeable; I don't know whether they were governed by the tides or winds more; I did not go on shore; I don't consider whaling *in* that region a pretty hazardous business, the whaling part; it is dangerous for ships; whaling is always dangerous; whales were easier captured there than at any other place I had been at; it was considered a new whaling ground; I had never been there before; I thought it would last till about the middle of September, before we lost sight of the Richmond in a fog, as before mentioned. While whales were plenty we had two whales and *over* on board at a time not tried up; we could take that blubber on board at a time; we could then take from three to four days in good weather to try up those two whales; in bad weather we could not try so fast; in the weather we had there there was not generally much difference; I mean such weather as we had while we were engaged in getting oil from the Richmond; it would not have interfered with *us* but little in boiling; it would not have interfered with us but little in catching whales; there was

no weather but what we could catch whales while we were there; I mean by catching to include towing them and cutting them in.

Q. Did not the boats of the Junior separate from, or loose their hold, on the whale to which you say they were fast, on the day when Mr. Reeve went *from* your vessel to the Junior?

A. The first one they did; but they soon got fast to another and took him to their ship.

Q. Did you see Mr. Reeves take any part in this?

A. I did not; it was while he was on board of us.

Q. How much whalebone could you secure ordinarily from 4 of those whales?

A. From 7 to 8,000 pounds, I should think, from 4 whales; there is a *difference* in whales; I speak of the average of those whales up there.

Q. When did your ship arrive in port?

A. Not far from the 12th of May last; we had a pretty long passage; we cruised awhile on the ground called the River La Platte, in South America, for them, which detained us a little; we wanted a little to fill up room that we had made where we had used up provisions and water on the passage; we did not get any oil.

AUGUSTUS E. HALSEY.

Sworn before me, *this* 17th day of July, A. D. 1850.

JOHN FOWLER, Jr.,
Commissioner of Deeds.

U. S. DISTRICT COURT,
Southern District of New York.

Part of the cargo of the Ship Richmond, N. and G. HOWELL, claimants,
ads.
WALTER R. JONES and others.

Thomas Sabina, a witness produced, sworn and examined "de bene esse" on the part of the claimants in this cause, testifies as follows: I am a *sea*-faring, engaged in whaling; my native place is Fayal; I have sailed out of Sag Harbor for sixteen years; I was connected with the E. Frith, in 1848 and 1849 as boat-steerer. I I know the ship Richmond; I saw her ashore at Behring's Straits, I think about the 6th or 7th of August last; we were standing in and for land, and got within 6 or 8 miles of the land; saw the sails of a ship *at* anchor; that was the Junior, round a point of land, one of her boats fast to a whale, and the other boat pulling after close to it to get hold of the whale; a little while afterwards we saw a sail right ahead of our ship; that was Mr. Sayre; I was present when he came on board; he, Captain Winters, asked him what the matter was; he said the ship was ashore; *captain* asked

him if they got her off; he said no, they couldn't get her off; she was full of water.

I heard Mr. Halsey testify just now; after Mr. Sayre had come on board, another boat came with Captain Winters, of the Richmond, and Mr, Reeves, her mate; Mr. Sayre said there was no need of us getting any whales; there was plenty of oil on board the Richmond; it would be of no use *to* them; they could not save it; when Capt. Winters came on board, he didn't speak a word; shook hands with the captain of the Firth, began to cry, and went right down into the cabin; Mr. Reeves was about the deck; I didn't hear him say anything then; I saw Mr. Reeves go on board the Junior; didn't hear any instructions given to him; I heard him say he was *going* to see if he could get passage to the Sandwich Islands for himself and boat's crew; we sterred for the Richmond; came to anchor there the next morning; we went on board the Richmond after breakfast, with axes, crowbars, &c—the mate, Mr. Cooper, of the Frith, Captain Winters, of the Richmond, and the rest of the boat's crew; the decks were head-over-heels with casks, rigging, *staves*, bludder; we found her mizzen-mast cut away, the flying-jib was gone on shore, main top-gallant-sail was loose clewed up; fore and main top-sail clewed up, and fore-sail was hauled up; the main-sail was furled; the rudder was carried away or split off; it was not fit for use; couldn't use it unless it was fixed; it was a bad shore where she was; it was rocky; I *worked* there getting the oil up every time the oil was got up from there; it was very bad work; indeed dangerous by falling into the holes where the beams were cut off at low tide; soon as the beams were sawed off a great many casks were empty under those that were full; they were knocked right on top of the water worse than a whale; there were pieces of beams, wood, staves, *and* dirty water floating round, going from one side to another every time a swell came and made her roll; there were many casks stoven by floating round and striking against one another; our mate, Mr. Cooper, was there with his crew; some of the other ships' crews there; none of the Richmond's crew; Mr. Sayre, of the Richmond, was there, and Mr. Cherry, third *mate* of the Richmond; Mr. Reeves was there; Mr. Reeves didn't do anything; the rest did not do anything that I saw; Mr. Carr, mate of the Junior, was there too with his crew, getting oil, and the mate of the Panama, Mr. Ryder, by different times; I saw he was there; the oil was put in buckets and throwed overboard, and then rafted, towed by the boats; that was very bad work, very hard work for the boats, to pull the oil to the ship; at the time Mr. Sayre and the captain and mate came aboard the Frith, no vessel but the Junior was in sight; the Panama got there two or three days after we commenced taking oil; can't say how long before the sale; I think two or three days before the oil was sold; I never saw Captain Hallock, of the Panama, on board our ship at any time; I saw that *notice* of sale on board the ship, nailed on the side of the main-

mast; saw one nailed on the main-mast of the Richmond; it was in writing; I didn't read it; don't know what it contained; we were one week in taking the oil from the Richmond to the Frith; saw the crew of the other vessels taking their oil too; they got theirs from the same place in the same way; they were working in different places—some at one *hatch* and some at another; the oil could not have been safely landed on shore from the Richmond; there was a heavy surf there in bad weather, and a rocky shore where she lay and very cold; there was first-rate whaling there during the time we were taking the oil; we would have had no difficulty in filling our ship by whaling; it was as easy as could be; there were *a* great many shooks thrown over from the Frith to make room for this oil, and four large new casks full of bread that I saw, and sails also thrown overboard; we saw whales round there every day; every morning plenty of whales; we could have taken and got on board during the time we were taking this oil whales enough to have filled our ship; we could have taken four whales, and they would have *filled* our ship; none of the oil could have been saved from the Richmond in any other way; I don't think it could; there was no probability at all of saving the vessel; I didn't hear any person connected with the Richmond say that they believe the vessel could be saved; her condition got worse all the time; I saw her mast moving, her main-mast particularly; every time a *swell* would come and lift the ship the masts would move up and down as if through the bottom; up and down about four inches, I should think; I saw this on deck, not down below; the beams below were cut away; the ship seemed to be moved up and the masts stationary; about the 12th August we finished and made sail for the Sandwich Islands; *the* Frith went first; we got through taking oil first; I don't know when the Panama left; it was after we sailed; a storm came on as we were towing a raft along side of the ship; we got that by running a line from the ship to the raft; I heard Mr. Sayre say if we had not come in as we did, they were about taking their boats and going up the Straits in search of a vessel; I heard Mr. Reeves say so also; *I* expect to go to sea next Monday, on a whaling voyage.

On cross-examination: I am going with Captain Winters, in the brig Charlotte. I came down to New York with him. I did not go ashore where the Richmond was wrecked. I think I worked on board the Richmond 6 or 7 days—I am not certain. I can't tell how many rafts went from her to the Frith. I think we got betwixt 5 or 6 boat loads of whale*bone* from the Richmond. I don't recollect how much of this we got from the deck of the Richmond. We got some off the deck; we got some laying between decks on top of the oil casks; we did not get any of it from the lower hold; not as I recollect anything about it. Our vessel brought home as far as the Sandwich Islands 9 or 10 of the crew of the Richmond, including the captain, *who* died on the passage before we arrived at the Sandwich Islands.

I saw the captain of the Richmond quite a number of times at work with us, while we were getting the oil out of the Richmond. I did not see that he was in poor health at that time. Some of the crew of the ship Richmond helped us to stow the oil down on board of our ship. Some of the crew were on board of the Junior, and some on board *of* the Panama. The crew helped us some before they were divided among the ships.

Being further examined on the part of the claimants, he says: Never saw anything in the conduct of Captain Winters, of the Richmond, that indicated that his mind was impaired, or that he was not perfectly sensible of what he was doing; he knew what he was doing as well as anybody. The *sailors* of the Richmond said they were willing to help us so as to get a passage to the Sandwich Islands as soon as possible.

On further cross-examination:

Q. When did they say that?

A. When Mr. Sayres came on board with his boat's crew. I mean, his boat's crew said so.

Q. How many will you swear said so?

A. I heard three say it.

Q. *Can* you give their names?

A. Mr. Sayer, for one. The other two I don't know as I give their names.

Being *further examined* on the part of the claimants, he says:

Q. When the three you mentioned said they would be willing to turn in and help you, so as to get away to the Sandwich Islands, were the others standing by or near?

A. Yes, sir; I don't whether the others heard or not.

THOMAS SABINA.

Sworn before me, this 17th day of July, A. D. 1850.

JOHN FOWLER, Jr.,
Comm. of Deeds.

Filed June 4th, 1852.

UNITED STATES DISTRICT COURT,
Southern District of New York.

Part of the CARGO, &c., of the ship RICHMOND, N. & G. HOWELL, and POST & SHERRY, claimants, *ads.* WALTER R. JONES et al.

It is hereby stipulated and agreed by the proctors for the respective parties *in* this suit, that Charles Winters be examined, "*de bene esse*," in this cause, on the part of the claimants, at the

office of the claimants' proctor, on the 16th day of October inst., at 4 o'clock in the afternoon; that such deposition so to be taken, after being sworn to before a commissioner of deeds, or other officer authorized to administer oaths for the State of New York, or before a U. S. Commissioner, may be read in evidence on the trial of this cause, by either party, with like effect, subject to all legal exceptions, including objections as to his competency, as if the same had been regularly taken before a magistrate or officer of this Court, upon an order, notice, &c., and that the same may remain in the possession of the claimants' proctors, a copy to be served upon libellants' proctors in ten days after said deposition shall be sworn to.

MOORE & McDANIEL,
For Libellants.
STEVENS & HOXIE,
Claimants' Proctors.

U. S. DISTRICT COURT.
Southern District of New York.

The CARGO of the ship RICHMOND, N. & G. HOWELL, and POST & SHERRY, claimants, *ads.* WALTER R. JONES and others.

Deposition of Charles R. Winters, a witness produced, sworn, and examined, *de bene esse*, on the part of the claimants:

I am a cooper, and live at Sag Harbor. I contemplate leaving this State next Monday, on a whaling voyage in the brig Pioneer, of Greenport. At the time of the wreck of the Richmond, *I* was on board the Elizabeth Frith, in the capacity of cooper. I don't recollect the date of the wreck of the Richmond, but I recollect the circumstance of her being wrecked in the Arctic Sea. We were whaling in that sea, in the E. Frith, at the same time.

Q. At the time of the wreck of the Richmond, how many barrels did the E. Frith want to fill up?

A. Six hundred and fifty.

Q. How many barrels of oil did she receive *from* the Richmond?

A. Five hundred and ninety-eight.

Q. How much bone?

A. About six thousand pounds.

I was on board the Richmond after she was wrecked, twice; the first time was the third day after we arrived, and the next time was the day after. I found the ship half full of water; *rudder*-post was gone. She was hopelessly wrecked. I saw the Panama's crew working there, getting oil out, with a part of the Richmond's crew. It was with great difficulty the oil was got, cutting away the deck beams. I didn't see them cutting, but saw them after they were cut. I saw them getting oil up through the places where

the deck beams had been cut. They were getting oil out of the steerage-hatch from the lower hold. The Panama *arrived* there, I think, the second day after we did; I am not sure. The casks that came from the Richmond that were guaged we took according to the guage on the casks, and the casks that was'nt guaged we guaged with the guaging-rod. That is the way I became acquainted with the quantity that came on board. There were casks hove overboard from the E. Frith, to make room for these casks from the Richmond, *and* sails, foresails, and topsails; six hundred and thirty barrels; they were not all in shooks; there some bread and some water-casks. Bread was in these casks; I should judge there was twelve hundred pounds of bread thrown over. Some of the crew of the Richmond were at work getting the oil out of the Richmond; can't say how many. Some of them helped to stow it away on board the E. Frith. I was not present at the sale. I saw *a* notice of the sale stuck up. I never heard any of the officers or crew of the Richmond object to any of the proceedings or the sale. I did hear them say they would turn to, and help get the oil from the Richmond on board our ship; that they wanted to get away from that place to the Sandwich Islands. This was the first day we went into the Richmond on board the Frith. I couldn't mention but the two boats' crews *that* came on board of us. Never heard any of the officers or crew of the Richmond express any belief or hope that any vessel would take the oil on freight; they said the rocks had gone through the bows of the ship, and, in all probability, she would go to pieces. Never heard any of them say anything about other vessels coming along there. There never was better whaling than there was there at that time the Richmond was there, and good weather. In two weeks, the E. Frith could have filled up by whaling, not tried out, in that time. The day we went in there, our ship was clear of blubber, and all ready to lower our boats, and take whales as many as we wanted. The whales had been plenty a week previous to this. The day we first went in, the Junior was the only vessel in sight. Panama and one other ship only came in sight while we were there; this last one was standing *to* the southward, with all sail set.

On *cross-examination:* I was a brother of Captain Philander Winters, of the Richmond, and also Captain Jonas Winters, of the E. Frith. We were all from Sag Harbor. I joined the Frith at Sag Harbor, as cooper and ship-keeper. I was to have $\frac{1}{85}$ in her proceeds. My brother Silas shipped as boat-steerer, and afterwards took also the duty of steward. *I* had been whaling one voyage before with Captain Wm. Jones, of Sag Harbor. I have called it one voyage, but I joined a New Bedford ship, and was in two ships. The Frith sent home 150 barrels of sperm from Fayal, as she went out. She sent nothing else home until she came. I don't know

where the Frith's log-book is. I last saw it on board of the Frith.

Q. Did the log-book contain an estimate *or* statement of the number of barrels of oil obtained from each whale?

A. No, sir. I think not.

Q. Did you keep any written account yourself?

A. No. sir.

Q. Did any one?

A. The first mate kept an account of the oil stowed down, in writing, in the log-book; we could not tell what each whale made. We would be getting the blubber of more than one whale in the blubber-room, so that *it* would get mixed. The casks on board the Frith were guaged before they were filled, and, as a general thing, the guage is marked on the stave next to the bung with a marking iron. The oil is put in the casks while it is hot The casks are all filled on deck first. The first mate would be always there when the casks were stowed away.

Q. Did any one keep a written account except the first *mate*?

A. I believe the captain did; I can't say for certain about that. No one else but the mate and the captain; not that I know of.

Q. How did you know how many barrels were wanted when you found the Richmond wrecked?

A. By the number of casks that we had, or by the quantity that we had stowed away. We could not tell exactly. I think we had more than casks enough to fill our ship. I don't *know.*

Q. Were the bread and water-casks that you threw overboard calculated to carry oil if you had caught it yourselves?

A. Yes sir; as fast as the bread and water was emptied, we would fill them with oil as we took it.

Q. Was any written account kept of the whalebone you secured before the wreck of the Richmond?

A. I think not. The log-book would show whether there was any kept or not.

Q. *When* the bone came from the Richmond, do you remember how it was managed and disposed of?

A. It was taken on the deck of the Frith, and put away down into the fore-hatch. I think it was put with the other which we before had.

Q. How many boats' loads were there of bone?

A. I can't say.

Q. How many do you remember?

A. I remember three—two whole boat-loads and two thirds of another.

Q. What did you personally have to do with either of those *loads*?

A. Nothing at all—not in getting it on board of the ship. I had nothing to do with stowing the bone away.

Q. What knowledge of your own have you, as to the quantity of bone taken from the Richmond?

A. By seeing it lay on the deck of the Frith.

Q. Did you think at the time it was more important to secure the bone than the oil from the Richmond?

A. No, sir, I thought about getting the oil. I had a desire to get both.

Q. *Did* the sailors generally speak most of the oil or the bone as important to be secured?

A. I did not hear them talk much about it any way. The most they conversed about was getting the ship full. I did not hear them speak much of oil or bone.

Q. What did you go to the Richmond for, and how long did you stay?

A. I went to becket the casks, to prepare them for a raft, on both occasions. This *was* done on the deck of the Richmond, and staid about an hour each time. The first time I went was after the sale.

Q. Did you hear Capt. Jonas Winters speak of the intended sale before it took place?

A. Yes, sir.

Q. Did he advise it, or require it to be made?

Yes, sir. He said it was best to go to work about it the way that would be for the best, and the way that would be right—that he did not want to do *any*thing that was contrary to law, and said that if any one would give more than a dollar a barrel for the oil, they would be welcome to that which was on board the Frith, which we had taked from the Richmond.

Q. Who was present when he said this?

A. I believe my brother Silas was present; and whether there was any one else present, I don't know—but it appears to me there was. I was standing on the quarter-deck of the Frith, and I was four feet from them. It was the morning *before* the sail; the cook was in the galley.

Q. Who left your vessel to attend the sale?

A. The mate and 2d mate of the Frith, with the boat's crew.

Q. What other boats did you see go about the same time?

A. The boats from the Panama and the Junior, a little before we did.

Q. What boats came to your ship just before going to the sale?

A. I don't recollect.

Q. Do you call it good weather for whaling in such a fog as that in which the Richmond got ashore?

A. *No*, sir, it is not good for whaling when it is foggy.

Q. Was it good weather for whaling when your ship tripped her anchor and left the ground?

A. Yes, sir, if we had been far enough from the land.

Q. In whose employ as agent or owners had your brother Philander been before he joined the Richmond?

A. Ezekiel Mulford, of Sag Harbor, was the last agent.

Q. *Did* you know anything of your brother's having assigned or pledged his earnings on board the Richmond before she was wrecked?

A. I did not know anything of the kind. I believe Post and Sherry have charge of selling the cargo brought in by the E. Frith. I claimed to be entitled to my share of what was taken from the Richmond the same as the rest—a share of all that was on board.

(Libellants' counsel give notice *that* they will insist the witness is interested and incompetent.)

Being further examined for the claimants, he saith: The conversation at the time Captain Jonas Winters spoke about the intended sale, was with Capt. Tinkham. He said he wanted to do what was best and according to law.

I have received from the owners of the E. Frith my *share* of the proceeds of that voyage—everything in full, clear of all demands; I gave them a writing.

CHARLES R. WINTERS.

Subscribed and sworn before me, this 16th day of October, A. D. 1851.

NATHL. B. HOXIE,
Com'r of Deeds.

We hereby waive all objections to the oath being administered to the witness by one of the proctors for the claimants.

New York, Oct. 16, 1851.

MOORE & McDANIEL,
For Libellants.

Filed June 4th, 1852.

U. S. DISTRICT COURT,
Southern District of New York.

The CARGO, &c., of the SHIP RICHMOND, N. & G. HOWELL, & POST & SHERRY, claimants,
ads.
WALTER R. JONES et al.

It is hereby stipulated and agreed by the proctors for the respective parties in this suit, that John Sweeny be examined as a witness de bene esse in this cause, *on* the part of claimants, at the office of the claimants' proctors, on the 30th day of April instant, at 4 o'clock in the afternoon; that such deposition so to be taken,

after being sworn before a Commissioner of Deeds, or other authorized to administer oaths for the State of New York, or before an U. S. Commissioner, may be read in evidence on the trial of the cause by either party with like effect, subject *to* all legal exceptions, as if the same had been regularly taken before a magistrate or officer of this Court, upon an order, notice, &c., and that the same may remain in the possession of claimants' proctors, a copy to be served or allowed to be made by libellants' proctors in ten days after such deposition shall be sworn to.

New York, April 29th, 1852.

MOORE & McDANIEL,
For Libellants.

U. S. DISTRICT COURT.

The CARGO, &c., of the SHIP RICHMOND, N. & G. HOWELL, and POST & SHERRY, claimants,
ads.
WALTER R. JONES et al.

Deposition of John Sweeny, a witness produced, sworn, and examined de bene esse on the part of the claimants in the above entitled cause. My name is John Sweeny; I reside at Bridghampton, Long Island; I am at present a farmer; I have been in the whaling business; I followed that business from the year 1829 up to last May, with the exception of about *five* years; I was master of a whaling vessel between five and six years; I have been whaling in the Anadir Sea and Behring's Straits; I have been up there in that neighborhood two seasons; I was there in the year 1849; I went there in June, and left in the latter part of August; I took whales in that vicinity; I know where the ship Richmond was wrecked in that year; I saw her after she was wrecked; she was something like twelve *miles* south, a little west from St. Lawrence Bay, on the Asiatic coast; when I saw her the first time there, it was somewhere about the sixteenth or seventeenth of August; she was then a wreck; there was one vessel there making sail, coming out from where the wreck was; the last time I saw the Richmond was about the twenty-seventh of August; I noticed her situation then; she was worse off than when I first saw her, inasmuch as *her* foremast was gone; saw nobody on board or near her; I was perhaps a mile and a half or two miles from her.

Q. During the time you were in the vicinity of the place where the Richmond was wrecked, what was the state of the whaling?

A. There were whales there during that time all the while I was in the Straits; I saw whales except when the weather was such that I could not see very far.

Q. How was the whaling in that sea from the first to the sixteenth *of* August, 1849?

A. As to that time I cannot say as to what I did myself; I know what others did; other ships did well, to my knowledge; I was master of the bark Columbia; ships appeared to be doing very well around me, taking whales; some full, and one with a whale alongside; some part of this time I was in the Arctic Sea, having passed through the Straits; I returned through the Straits about the sixteenth or seventeenth of August; *except* the ships engaged about this wreck, I never knew any vessels taking oil or bone, from this quarter of the world to any other place, on freight; there never has been any instance, to my knowledge, where a vessel up there has been called upon to take oil or bone on freight; I mean by up there, the Arctic region; I have heard of such a thing being done lower down.

Q. Supposing you were whaling in the vicinity of where the Richmond lay, *the* whaling good, and your ship requiring about 600 barrels to fill, would you have taken oil or bone from a wreck to carry to the Sandwich Islands or elsewhere on freight?

A. No, sir.

Q. Under the same circumstances, would you have been willing to fill up your ship with bone from a wreck, to bring home or to the Sandwich Islands on freight?

A. No, sir.

Q. Under the *same* circumstances, what would you have been willing to have given for oil, to take it from a wreck, the time being the early part of the month of August?

A. I should have felt myself justified in giving very little indeed.

Q. For what reason or causes?

A. We have a little pride in filling our own ships, and, under the same circumstances, I would prefer catching my own whales.

Q. Is there any danger in taking oil from a wreck at that *that* place, at that season?

A. Yes, sir, there is always more or less danger.

Q. *You* have said you would not feel justified in giving but very little for oil under the circumstances mentioned. How much would you have given? (Objected to.)

A. I wouldn't have given but very little for the oil—a mere trifle, hardly worth mentioning. I never would have given over a dollar for it. My reasons would be these: In the first place, we have a pride about our business. I would rather catch my own whales. In the *next* place, in order to take this oil, we have got to lay our ship somewhere in the neighborhood of a known danger, and that I would rather avoid by taking whales in the open sea, at some distance from the land. Further, if there was that quantity of oil wanted, whales plenty, and fortune good, she could take whales to produce it about as soon as she could take it from the wreck. My knowledge of this wrecking business *is*, that there is danger of life in getting it out. The day before I first saw the Richmond, I picked up a cask of oil; it was full. I saw another,

which was picked up by another ship; those were all that I saw. I am of opinion that the Richmond could not have withstood the winter. Oil might be preserved there through the winter, on shore, if properly taken care of; I don't know that it could not. I saw *whales* on both the days I saw the Richmond. I did not take one on either of those days. I took one on the twenty-fifth or twenty-sixth of August. I expect to leave this State for California on the 10th of May.

On *cross-examination:* We secured about 200 barrels of oil, from which we took on the 25th or 26th of August, that was taken in company with another ship, (an Indian name,) and our vessel had 100 barrels of it. We took a whale on the 11th of August, and secured a part of her oil, and lost the residue alongside—I think less than 25 barrels of oil; am sure it was less than 50; it was a very small part. The last previous date at which we secured any oil was some time in July. All that we secured after the 1st of August did not exceed 125 barrels. The one on the 11th of August was in the *Arctic* Sea. I left the Anadir Sea about the 29th of July, passed the latitude of the Richmond, without seeing her, about the 3d of August; went north about to 67 deg. N.; returned, seeing the Richmond, about the 16th, not passing her then, and going south, was to pass her about the 27th of August. The intermediate time I lay at anchor, just to the northward the Richmond, in St. Lawrence Bay, about 12 miles from her. Three or four of the first days of August it was considerably foggy and thick most part of the day. There were parts of the day when we could see some distance; from the 5th day of August up the 16th, the greater part of the time, to the best of my recollection, it was very fair weather, with the exception of the 11th, or thereabouts, when there was a gale which lasted some 24 hours.

Q. *Can* you name the vessels which you saw secure oil between the 5th and 27th August?

A. I saw the Gen. Scott, of New London, the Montezuma, (Capt. Benjamin.) I am so forgetful of names that I can't recall others just now. I know there were a number of others.

Q. Between the 5th and 27th of August, how many whaling-ships in all did you see?

A. One day I think *I think* I counted 20 *in* the Arctic Sea. The Moriah, of New Bedford, I recollect now, I saw securing oil. I should think I saw during that time 50 different ships.

Q. How many barrels did your ship secure that season on the northwest coast and north of it.

A. Thirteen hundred barrels.

Q. Between what dates did you secure the most oil?

A. Between the 20th of June and the latter part of July.

Q. *About* how much oil did you secure between those dates?

A. Eleven or twelve hundred barrels.

Q. Was it what you call good whaling during that period generally?

A. Yes, sir, most of the time very good whaling; latter part of July it was blowing some; not so but we could boil and take care of oil after we had it on board.

Q. Is about 1,000 barrels of oil a month a fair average quantity to *secure* in good whaling?

A. It depends upon the vessel and the circumstances. I had a small ship and light hands. That is more than the average of vessels secure. I took in that season 1,000 barrels in 21 days. I took it on board, but it was not all boiled out and stowed away. I had secured it.

Q. Will not whalebone stow much closer on board, in proportion to its value, than oil?

A. *I* should think it would; there is a material difference.

Q. Suppose you had room for 600 barrels of oil, and the season appears pretty nearly at an end, would it not be much more profitable to take whalebone already secured, upon the terms of having one-third or one-half of it, than to fill up with oil?

A. I have never made the calculation; I can't say; I should prefer filling up with oil.

Q. *In* stating that you should prefer filling with oil, and that you would not be justified in giving much, do you mean to refer to the uncertainty whether your owners would adopt your purchase, as one of the difficulties?

A. I should not be positive as to that. I think there might be room for difficulty. That would be one reason when whales were all around.

Q. Did you secure any oil from the *cask* you picked up?

A. Yes, sir, it was full; about three barrels.

Q. Had you any reason to believe it was from the Richmond?

A. I had, but not at that time.

Q. Was there any difficulty in getting it?

A. No great; no more than to run off and pick up a cask in the stream. It was, perhaps, 12 or 15 miles from the Richmond.

Q. Did you ever report the securing of that cask to the owners or agent of the Richmond?

A. *No*, sir.

Q. Did your ship remain over another season?

A. She staid over.

Q. Did you send anything home from Sandwich Islands?

A. Yes, about 400 barrels of oil and about 16,000 pounds of bone. It was consigned to John Budd, of Sag Harbor, but carried the oil to Nantucket, and the bone to Fairhaven.

Q. Do you know how much the freight was?

A. *The* bone a cent and a-half a pound; the oil, my impression is, 9 cents a gallon; it may have been eight cents—not under eight. The bone I recollect distinctly about, because that price was high.

The 16,000 pounds of bone was caught with between 900 and 1,000 barrels of oil, I having lost some bone. The average of mine in the Arctic region of the Polar region was between 1100 and 1200 pounds of bone to 100 barrels of *oil*, but I lost some heads of bone, which would have made the average higher.

Q. Which took the most room on board, the 400 barrels of oil or the 16,000 pounds of bone that you sent home?

A. The oil took up the most room.

Q. Do you remember about what each produced?

A. The bone sold for about 31 or 32 cents a pound, and the oil about 52 cents a gallon, for the polar oil. A barrel averages 31½ gallons.

Q. *How* many of the 50 vessels that you saw between the 1st and 27th of August remained over another season, or what proportion?

A. I should say half of them, at least.

On further *direct examination:*

Q. When you said you would not give more than a dollar a barrel from a wreck, did you take into consideration the getting a proportion of bone with the oil?

A. I did not mention *that* fact. This is the only instance I have heard of, and I understood the oil and bone went together. I should not have been willing to take hardly any away. I had heard of another vessel, some years before, wrecked on Behring's Island.

Q. What did you know or hear about that vessel, or the sale of her cargo?

(Hearsay objected to.)

A. I simply heard, that, after being wrecked, she sold her oil for a dollar *a* barrel, bone included.

Further *cross-examined:*

Q. Would it make any material difference in a sale, if the bone and a portion of the oil were already taken out of the wreck, and on board of your vessel at the time of the sale?

A. I have not thought of that up to this present time. I should not feel as if I wanted that oil very much. I don't know as it would *affect* me much, one way or the other, as to its being already safe. I should do what I thought was right in the case.

JOHN SWEENY.

Subscribed and sworn before me, this 30th day of April, 1852.

NATHANIEL B. HOXIE,
Comm'r of Deeds.

We hereby waive any and all objections to the oath above being administered by one of the claimants' proctors.

MOORE & McDANIEL,
Proctors.

Filed June 4th, 1852.

U. S. DISTRICT COURT,
Southern District of New York.

Part of the CARGO, &c., of the SHIP RICHMOND, N. & G. HOWELL, claimants,
ads.
WALTER R. JONES and others.

It is hereby stipulated and agreed by and between the proctors for the respective parties in this cause, that Jonas Winters be examined as a witness, *de bene esse*, in said cause, on the part of the claimants above named, at the office of the claimants' proctors, on the 16th of July instant, at 11 o'clock in the forenoon. That such deposition so to be *taken*, (the witness submitting to a cross-examination,) after being sworn to before a Commissioner of Deeds, or other officer authorized to administer oaths for the State of New York, or before a U. S. Commissioner, may be read in evidence on the trial or hearing of this cause, with like effect (subject to all legal exceptions) as if the same had been regularly taken before a magistrate or officer of this Court, upon an order and notice, &c., and that the same need not be filed, *but* may remain in the possession of the claimants' proctors, a copy thereof to be served on the libellants' proctors, within ten days after such deposition shall be sworn to.

E. H. OWEN,
Proctor for Libellants.

New York, July 16th, 1850.

U. S. DISTRICT COURT,
Southern District of New York.

Part of the CARGO, &c., of the SHIP RICHMOND, N. & G. HOWELL, claimants,
ads.
WALTER R. JONES and others.

Jonas Winters, a witness produced, sworn, and *examined*, on the part of the claimants above named, testifies as follows:

I follow the sea, and reside at Sag Harbor. I was in the Elizabeth Frith, in the years 1848 and 1849, in whaling. I was captain of her. In the month of August, 1849, I was in Behring's

Straits, whaling there. I saw the ship Richmond there a number of times. Previous to the Richmond going ashore, I had been in company with her six weeks or *two* months. We left the Japan Sea together on the 8th day of May, steered for Behring's Straits. On the 5th day of August, 1849, we had just got through boiling two whales, and were standing in for the western Asiatic coast of Behring's Straits, where we had been whaling, and where there were plenty of whales. We got within six or eight miles of the land, getting our boats ready to lower for whales, there being plenty of whales in sight in every direction. We *descried*, in near the land, a boat, with her sails set, coming from the land, steering off from shore towards our ship. As she neared the ship, we discovered her to be one of the Richmond's boats. We knew her by the paint; when she got within hail of the ship, I hailed her. It proved to be Mr. Sayres, the second officer of the Richmond. I spoke to him, and asked him what was the matter? He *says* to us: "The ship is ashore." I asked him, is there any one lost?—if the ship had gone to pieces? He answered, that there was no one lost, that the ship had not gone to pieces, but was full of water. He came in then with his boat's crew, and told us, if we had not come in that morning they were going to man their boats, and go out in search of a ship. He was very glad we happened in there. It was not necessary for us to whale any more, *as* there was plenty of oil in the Richmond, and we could fill our ship, and they would be willing to turn in and help get it out, for the sake of getting away from there. While we were conversing, saw another boat pull off from the shore towards our ship; the boat came alongside, and proved to be the captain and mate—Captain Philander Winters, a brother of mine, and Charles Henry Reeves, the mate. They reported to us that the ship went ashore on the 2d *of* August, between two and three o'clock in the afternoon. They said it was in a very thick fog, so much so that they could hardly see the length of the ship. They attempted to get her off, by carrying out a kedge and hawser. After they found she couldn't be got off, they went on board, and picked up their things, what they could of them, and what provisions they could get in their boats, and *left* the ship, and went on shore. The next morning they went on board the ship, and found her full of water; rudder gone—I mean broke. My brother and the mate said, when they came aboard of me, that it was not necessary for us to whale any more; that there was 3,600 barrels of oil in the Richmond, and any one could go and get what they wanted; we, if we choosed, could fill our *ship;* they would turn in and help us get it out—fill our ship as soon as possible, and get away from there. I asked them, if there was any probability of saving any of the oil in the ship. They said, no other way unless some ship took it out; they could not land it on the shore, because the shore was rocky, and a heavy surf on it; that there was a high bank, and at high *water* the sea went up to the foot of this bank. They said the best

thing we could do was to go and get the oil out, as they were anxious to get away from there. I told my brother, in the first place, I didn't wish to have anything to do with it, because the chance for getting it was very good; plenty of whales around, and I thought it would be attended with less difficulty and less danger to my ship to take whales instead of going to get the oil from the Richmond, as I knew we had to anchor in the open ocean, and I told him I didn't like the idea of doing so, exposed to the winds. He said he thought the chances to get the oil were better; we should get away sooner than if we took whales. The ship Junior was then lying about eight miles from our *ship*, and Captain Winters, of the Richmond, advised Mr. Reeves, the mate, to go on board of the Junior, and notify the captain of her of the loss of the Richmond, and see if he would be willing to take a part of the crew from there to the Sandwich Islands, and to tell Captain Tinkham, of the Junior, that there was 3,600 barrels of oil in the Richmond, and to ask Captain Tinkham to come on board the E. Frith. The Junior was at this time at *anchor*, cutting in and boiling whales. Mr. Reeves went, and Captain Tinkham came on board the E. Frith; at this time, there were no other vessels in sight. When Captain Tinkham came on board, he said he was willing to take one-half of the crew, providing that the Frith took the other half; but it was agreed that if any other ship came in, and was willing to take any of the crew of the Richmond, *they* should be distributed more equally round. Captain Tinkham said he was willing to take some of the oil, providing it was put up and sold at auction, and notices put up around. He said he could't be able to take in any oil for two or three days, until he got through boiling the blubber he had on board, as it would be impossible for either of us to take that oil and *whales* both; could't do both at once. My brother then said we had better go in and come to an anchor as near the wreck as possible, and take what oil we could until Captain Tinkham got ready to take oil, as he thought all the oil we could get aboard of the Frith would be saved—the Richmond being liable to go to pieces if it came on to blow; and as soon as Captain Tinkham came to an anchor, he would put up advertisements and advertise the sale as *he* ought. On the 7th of August, Captain Tinkham being nearly through boiling, came to an anchor a mile from the wreck; the Frith was then at anchor there, about one-quarter of a mile from the Junior. My brother then put up advertisements on board the Richmond, the Junior, and the E. Frith, on the mainmast of each vessel, I think. It stated that the oil and cargo would be sold, and the wreck *after* the sale of the oil, as near as I can recollect. I am confident about the oil, and I think it said the wreck to be sold on the 8th of August, to the highest bidders, at auction—not private sale. On the 7th of August, we discovered another ship off at sea, and Mr. Reeves was sent off on board of her to notify her of the loss of the Richmond and of the sale. I didn't hear him sent, but Capt.

Tinkham told me *he* had sent him. Mr. Reeves at this time made his home on the Junior. This last vessel proved to be the Panama, Capt. Hallock; she belonged at Sag Harbor; she was boiling out blubber at the time; I saw Mr. Reeves going on board of her, and directly I saw her keep off to where the E. Frith and Junior were laying; the Panama came in and came to an anchor, then nearly dark; nothing else of importance *till* the sale. The next morning, the 8th of August, I took a boat and went on board the Junior; from there I went on board of the Richmond; a few moments after I got there, Capt. Tinkham, Capt. Hallock, Mr. Carr, mate of the Junior, Mr. Reeves, mate of the Richmond, with a boat's crew, came on board of the Richmond also, and soon after a number of the Richmond's crew came on board from the shore, where they had *their* tents built—some boat-steerers, and I think the 3d mate; found the Richmond full of water—that is, above her lower deck, within two feet of her upper-deck hatches; found the rudder broke to pieces, and her mizzen-mast gone, cut away; sails hanging from the yards, not furled, and some of them torn—everything indicating a complete wreck; I think it was about 8 o'clock a. m. the sale took place; my brother authorized *Mr. Carr*, the mate of the Junior, to act as auctioneer, and sell the cargo and the wreck; after he had been appointed auctioneer by my brother, he put the oil up in lots; it was understood that it was to be put up in lots from 1 to 1,000 barrels, or as much as each ship should want to fill them; the first lot put up, I bid $1 a barrel for it, with a proportion of bone to go with each lot; at the time the *first* lot was put up, this oil that I had taken on board the Frith previous to the advertisement being put up, I said to the people on board, if any gentleman here will pay more than $1 a barrel for that oil I have on board the Frith, he can take it; now the great part of it is on deck. We supposed we had about three hundred barrels that we had taken from the Richmond; we had taken then three hundred barrels of oil on board the Frith, at the request of *Capt.* Winters, of the Richmond, for safe keeping, as she was liable to go to pieces if it came on to blow. The auctioneer dwelled some time on my bid, and then struck off that first lot to me; no one else bid. The second lot was put up; it struck off at 75 cents per barrel to Capt. Tinkham. Third lot was put up and struck off to Captain Hallock at 75 cents per barrel, with a proportion of bone to go with *each* lot; I took 600 barrels; 300 barrels besides what I had previous. Don't recollect how many barrels Captain Tinkham took; 7 or 800 barrels, I should think—enough to fill up his ship. Captain Hallock took about six or seven hundred barrels; enough to fill his ship. To get the oil I bought, I had to cut away the deck beams in order to let the oil float up from the lower hold; we had to work at low tide to cut the beams, *and* even then up to our knees in water and gurry. There was a great deal of the oil floating around, staven oil-casks, staves, casks' heads, stanchions, pieces

of wood, blubber; oil-casks were being staved every day in the Richmond by the motion of the ship—striking against each other. All the oil that was got out of the lower hold, was got out with the same difficulty and trouble. It was very *hard*, disagreeable work, wading around in that cold water; there was danger attending it also, from the articles floating around, and being liable to fall into those places where the beams were cut. All the parties who bid off at that sale had to get the oil from the lower hold, except what I had formerly taken on board the Frith, as above stated. I think we finished taking oil on board my ship on the 12th of August; we should have had another raft, *but* the wind came on to blow and rain; ship struck adrift, and dragged her anchor, and we were obliged to get under way, or would have drifted ashore. The getting the oil from the Richmond to the Frith, after it was out of the lower hold, was attended with a great deal of difficulty, owing to the strong current running there, and a good deal of the time a rough, short sea; that was the case *with* all the oil that went to the other ships; we lost nearly one whole raft while conveying it from the Richmond to the Frith. During all the time from the first taking of any oil from the Richmond until we finished we did not whale at all; we gave our whole attention to the business we were engaged in, day and night, trying to save what we could; I saw the officers of the other vessels also at work getting out this oil and transporting it to their vessels, day and night—that *is*, from 2 o'clock in the morning to 8 or 9 at night; they were not whaling at the time; they gave their whole attention to it; during the time we were occupied in this matter, plenty of whales were in sight, very easily taken; we found it so when whaling; got them as fast as we wanted them. While we were at anchor, working at this oil, a large dead whale was drifting within a mile of us, and we could not take it on account of being engaged in taking this oil. The Richmond *was* on shore on the Asiatic coast, Behring's Straits, near the mouth of St. Lawrence bay; no inhabitants there but natives. I should think the situation of the Richmond was precarious; she was not sheltered from storms or wind from the north-northeast to southwest; I should think she could not have remained as a ship if a storm had arisen; I found her condition on going on board as it had been represented to me by her officers; worse in *many* respects. The oil could not have been landed within a mile and a half of where she lay; the shore was rocky there; something of a surge; so much so that a boat couldn't land without danger of being stove to pieces on the rocks; I found, on going on board the Richmond, that she thumped so much I could hardly keep my feet; mostly at high water; at low water she lay quite still; none of the crew of the Richmond remained on board of her; some of the *crew* didn't help get the oil out; the rest of her crew did help. I saw Mr. Reeves helping to get the oil out, and towing on board the Junior with his boat—the one he used to have on board the Rich-

mond. The sale was made under the direction and superintendence of my brother, Captain Winters; Reeves was present at the sale; he made no objection to it, that I heard; never heard him make any; have seen him a number of times since; my brother, Captain Winters, is dead. I have no doubt that in the time occupied in taking oil from the Richmond, I could have filled my vessel by whaling; I wanted but four whales to fill up my ship; the facilities at that time for taking whales were as good as usual. The season there closes about the middle of September; we had to heave our own oil casks overboard to make room for this we got from the Richmond; most of *ours* were new. There were about 600 barrels; that is as nigh as I can judge; I saw them doing the same thing from both the other vessels. We had about 600 barrels left to fill up our ship, and we had to heave about as many overboard as we took from the Richmond; we hove over 1600 pound of bread and 2 topsails, besides rice and some beans. I don't know that Captain Hallock, of the Panama, had any interview with *any* of the officers of the Richmond before the sale; I know he did not have any with my brother, the captain. After the vessels had taken in the oil, they sailed away for the Sandwich Islands, with the officers and crew of the Richmond. I expect to go to sea next Monday on a whaling voyage, and to leave the city of New York to-morrow. The condition of the bone that was sold with the oil was bad; most of it had not been cleaned. Mr. Sayre first told me, and *afterwards* Captains Winters and Reeves told me, that they were going to look for other vessels, as I have before stated, if we had not been in sight. At the time the captain and officers came on board my ship, the Junior was not visible from the Richmond; there was a high point of land that hid her from the view of the Richmond.

On *cross-examination:*

The Elizabeth Frith sailed from Sag Harbor on *the* 12th of July, 1848, on a whaling voyage. We took some whale going out, before we reached Fayal—170 barrels of sperm oil—which we shipped home, and proceeded to the Sandwich Islands, and from there to the Japan Sea—arriving there about the 10th April, 1849; remained there until the 8th of May, when we left there, with the Richmond, as before mentioned; to the best of my recollection, we had then about 210 barrels on board; *we* arrived off the mouth of the Anadir Sea on the 18th of June; that is the day we took our first whale there; we took one whale on the way; after the 18th of June, we took 12 whales before we found the Richmond a wreck; those 12, I should think, averaged about 175 barrels; we went about 20 miles north of where the Richmond was; I used 4 boats in whaling with my ship up there; I first went on board of *the* Richmond on the 8th day of August, at the time the oil was sold; I mean personally; I think I was there nearly an hour; I don't recollect of going aboard of her but once after that; at that time I

remained betwixt three and four hours, and was at work myself in getting out the oil; I do not recollect how many rafts were got out for my vessel.

Q. Do you know whether Capt. Hallock, of the Panama, objected to taking any *oil* unless there was an auction?

A. Yes, sir; I think I heard him say that he would not take any unless it was put up and sold at auction.

Q. When and where did you hear him say this?

A. I think it was aboard of the Richmond, the morning that the oil was sold.

Q. Had you any idea that the crew of the Richmond would or could buy any of the oil at the sale?

A. I had no idea that they would; it was *their* privilege to bid as much as any body else.

Q. Had you any idea that the masters of either of the other vessels would buy the oil which you had taken out before the sale?

A. I did not know; I had no idea about it; it was their privilege to do so, if they wanted it.

Q. Had the crew of the Richmond helped get out that oil?

A. Some of them had; they generally had; there were a few exceptions; some of them were on shore.

Q. *Did* you go on shore?

A. No, sir.

Q. What sails were hanging from the yards not furled at the time of the sale?

A. Main-top-sails, and main-top-gallant-sail, and some sails on the foremast.

Q. How much were there unfurled?

A. None were unfurled that I spoke of; they were merely clewed up—hanging on the brails; my brother came on board of my vessel, with the mate, on the fifth of August, and by spells remained there, after that time—making my vessel his home; he did not bring his things *when* he first came, and went sometimes on shore, and sometimes to the Junior; on the 6th of August, he brought his things and the chronometers on board the Frith from the shore; he very often assisted us in towing the oil, coopering the oil, (he was cooper by trade,) stowing it down, and, at one or two different times, he carried the dinner to the men who were at work on board the Richmond; nothing was the matter of *the* bread that we hove over; I should think the 1,600 were not far from 15 barrels; it had been brought from Sag Harbor, and been on board about 13 months; besides the oil I have mentioned, we brought home two chronometers that had belonged to the Richmond, two deck and one cabin compass, one barometer; I think that is all; I brought a boat to the Sandwich Islands for Captain Tinkham that had *belonged* to the Richmond; there was no freight agreed upon when we left Behring's Straits; I told him when we arrived

at the Sandwich Islands, that he must pay me something for bringing her, as I had stove one of my new *boots* in making room for this one of his; he paid me $5; that is what I charged him; he paid me at the Sandwich Islands; he took her from my ship; I don't know what he done with her; I cannot say *what* that boat was worth at the Sandwich Islands.

Q. State as near as you can what, in your judgment, it was worth?

A. I never examined it; it might have been worth $5.

Q. Was it not, in your judgment, at the Sandwich Islands, worth twice that sum?

A. No, sir; not to any one that did not want it.

Q. A direct answer insisted upon.

A. It had no value that I know of, in my judgment.

Q. *What* became of the other articles you have mentioned?

A. They are in Messrs. Post & Sherry's care.

Q. What is their value?

A. I can't say what their value is; the compasses were not worth anything at all, in my judgment; the barometer I should think a good one, with repairs.

Q. Where were those articles at the time of the sale?

A. On board of the Elizabeth Frith.

Q. Were they, or any of them, exhibited to the *other* masters before the sale?

A. Not that I know of.

Q. Where was the boat which you took to the Sandwich Islands at the time of the sale?

A. I don't know where that one was; some of them I was told were on shore; one or two may have been alongside of the Richmond; I don't recollect.

Q. How much whalebone had you on board of the Frith before the sale?

A. Three boat-loads; bone that was not cleaned; bone in the gum.

Q. How many boat-loads in all did *you* take to your ship of whalebone?

A. Five loads and a half; one of the five was bone that had been scraped and cleaned; all the rest of it was in the gum, as it came out of the whale's head.

Q. In what state was the empty casks which you threw over?

A. Some in shooks, some set up and empty, and some with the bread in, and a few, I think, that had water in.

Q. Is it a common thing to throw over any surplus *casks* after a ship is full?

No, sir; I never saw any hove over; they generally calculate to fill them all; we had to heave them over to make room to work around deck, when we were taking in oil from the Richmond; we could not keep our casks and hers on deck; there was no one

on board of my vessel that kept an account of those that were hove overboard.

Being *further examined* on the part of *the* claimants, he says: I don't know whether the chronometers belonged to my brother or the Richmond; I have heard him say they belonged to the Richmond; I had no agency in bringing them, or causing them to be brought on board my ship; I told my brother to bring his things, and he brought these articles with him; my brother had the general management of the sale, and matters connected with the sale, that I have spoken of; I can't now say the *number* of gallons of oil that I had from the Richmond; 599 barrels and 2 breaks.

JONAS WINTERS.

Sworn before me, this 16th day of July, 1850.

PHILIP MILSPAUGH,
Com'r of Deeds.

Filed June 4th, 1852.

U. S. DISTRICT COURT,
Southern District of New York.

WALTER R. JONES and others,
vs.
The CARGO of the SHIP RICHMOND, &c.

It is agreed that the annexed deposition of George G. *Benjamin*, after being sworn to before a U. S. Commissioner, or a Commissioner of Deeds, may be read with like effect as if regularly taken, de bene esse, and the same need not be filed if a copy be served.

New York, 4th April, 1851.

STEVENS & HOXIE,
Proctors for Claimants.

U. S. DISTRICT COURT,
Southern District of New York.

WALTER R. JONES and others,
vs.
The CARGO, MATERIALS, &c., of the Ship RICHMOND, N. & G. HOWELL, *claimants*, and POST & SHERRY, claimants.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York.

George G. Benjamin, being sworn and examined, de bene esse,

by consent, as a witness on the part of the libellants, deposeth and saith, in answer to the several questions put to him, as follows, viz:

I reside at Preston, New London county, State of Connecticut, more than 100 miles from New York, and am a ship *master* by profession. I was last master of the whaling ship Montezuma, and sailed in her from New London, on 17th August, 1848, and returned in her the 17th of February last, 1851; absent 30 months. She was a ship of 424 tons, and carried 33 men, all told, and brought in rising 3,400 barrels of oil, and about 15,000 pounds of whalebone, having sent home the previous season about 24,000 pounds of bone, all caught by our ship; it is a common practice to *send* home bone from the Sandwich Islands.

(It is understood that the whole of the testimony of this witness is taken subject to objection as to relevancy or materiality.

This is done in particular when a vessel stays over to catch whales another season; we paid two cents a pound freight for the bone from the Sandwich Islands home; it is generally less. I have known it to be one cent a pound; I never knew it to be higher than two cents a pound; bone, I think, will stow closer in a vessel, in proportion to its value, than oil. If we took out oil casks to make room for the 24,000 pounds of bone, I think we should have to take out casks enough for 100 barrels of oil, of 31½ gallons per barrel; we can stow it in a good many places on board a vessel without displacing any casks of oil. If a vessel were full of oil, I think it would still be advisable to get bone if we could; all ships that *ever* I have been in, there have always been more or less places that you could stow bone in after you was full of oil. I don't think there is any material difference in the space taken up by bone after it is split, whether it is gummed or not; gumming is cleaning it; I generally first split it up into three or four slabs, or a bunch, and then gum it afterwards; when we have nothing else to do we scrape it; I think a whale, taken up in Bhering's *Straits*, producing 150 barrels of oil, would produce, according to the average, about 2,000 pounds of bone; the pounds are computed after it is cleaned and scraped.

Q. Where was you with the Montezuma on the 1st of August, 1849, and from that time until the 21st of August, of that year? and did you see the ship Richmond during that time; please to refer to your log-book for dates and particulars, if *you* can state them accurately?

Answer. On the first of August, 1849, we were in latitude 67° 20′ north, and longitude 170° W., in the Arctic Sea, near Behring's Straits; we had been as far north as 70°; on the next day we were in latitude 66° 45′ N., and long. 170° 3′ W. We was around there without taking down the latitude or longitude until the 20th of

August, when our latitude was 65° 41′ N., no latitude taken. On the 21st of August, *we* saw the ship Richmond, of Cold Spring, on the Asiatic coast; we were some 8 or 10 miles off when we saw her; I went on board of her; I found her hard aground, some 4 or five ship's length from the shore; I should think it was some 4 or 5 miles to the southward of St. Lawrence Bay; it was on the south side, not in the bay; there was no other vessel there near the Richmond, or working at her. The Gen. Scott and *the* New England were in company with me; neither of them were full; they all staid over another season to fill up; we should have been glad to fill up from the Richmond, if we could; on examining her we did not find anything of any account; we found no oil or bone at all; her fore and main-masts were standing. I knew of other vessels that were up there that season which did not get full; I *recollect* the James Murray, the Isaac Hicks, the bark Columbia, of Sag Harbor. There were a number of others, I don't recollect their names now.

Q. How many barrels of oil did the ships generally catch there that season, after the 5th of August?

(Objected to.)

A. I should think they averaged some 4 or 500 barrels; we took about 400 after that time, remaining up there until about the first of September.

Q. State your observations in respect to *whaling*, and seeing whales, on each day between the first and 21st of August, of that year?

A. I cannot recollect the exact dates; I have the log-book which was kept by the mate, and seen by me every few days, not every day; I saw it often enough to be satisfied of its correctness.

(Claimants' counsel objects to the witness referring to the log-book to refresh his memory; subject to this objection, the witness refers to the log-book, and proceeds to answer the question.)

A. On 1st August, we saw no whales.
On 2d August, we saw no whales.
On 3d August, saw 3 whales; lowered, and did not get fast.
On 4th August, saw 8 whales; lowered, but did not get any.
On 5th August, saw one whale; lowered, and did not get fast.
On 6th August, saw 4 whales; lowered, in company with ship Catharine; we were mated at the time; their boat struck the whale, and we killed it; it made about 150 barrels of oil.
On 7th August, saw no whales.
On 8th August, picked up a dead whale; it made about 100 barrels; did not see any live whales.
On 9th August, saw no whales.
On 10th August, saw no whales.

On 11th August, saw 1 whale; lowered and got him; it produced about 190 barrels; it is so marked here.

On 12th August, saw nothing.

On 13th August, saw no whales.

On 14th August, saw whales; the weather *was* too rugged to lower.

On 15th August, saw no whales.

On 16th August, saw whales; too rugged to lower for them.

On 17th August, saw whales; lowered and fastened to one, but lost him.

On 18th August, saw one whale; too rugged to lower.

On 19th August, saw whales; lowered and did not get fast.

On 20th August, saw no whales.

On 21st August, saw no whales; we caught no more after that, that season.

Q. *What* other whale-ships did you see, and how did they appear to be engaged on each day, between those dates?

(Same objection as the last.)

A. On 1st August, saw no ships; at any rate none are mentioned on the log-book, where it was usual to mention them.

On 2d August, two ships in sight; spoke the Isaac Hicks.

On 3d August 7 ships in sight; two of them boiling.

On 4th August 8 ships in sight; two boiling; spoke the Gen. Scott.

On 5th August, 4 ships in sight, and latter part of day 13 ships in sight; 4 boiling.

On 6th August, same ships in sight; two got whales.

On 7th August, 8 ships in sight; 3 of them boiling; ship Catharine took a whale.

On the 8th August, saw no ships.

On 9th August, 5 ships in sight; 3 of them boiling.

On 10th August, 8 ships in sight; 5 of them boiling.

On 11th August, saw no ships.

On 12th August, saw none.

On 13th August, saw none.

On 14th August, 3 ships in sight; one boiling out.

On 15th *August*, 5 ships in sight; one boiling.

On 16th August, 8 ships in sight; two boiling.

On 17th August, 6 ships in sight; two of them got whales; ship Catharine full, bound home.

On 18th August, 6 ships in sight; 4 boiling.

On 19th August, 3 ships in sight; none boiling.

On 20th August, 2 ships in sight; names before mentioned; not boiling.

On 21st August, 4 ships at anchor in St. Lawrence Bay; that was the day we saw the Richmond.

Q. What was the general character of the weather during this period, from 1st to 21st of August?

A. As near as I can recollect from the 1st *to* the 10th, it was good weather; good whaling weather most of the time; the rest of the time it was rugged, with now and then a day that you could whale; it was occasionally foggy during the whole period.

Q. How does the rugged weather up there affect whaling, and does it not delay or prevent boiling out, as well as catching oil?

A. Rugged weather you can't whale at all, not if its too rugged; in bad weather we can't catch whales so well as in good. *In* rugged weather we can't boil nor take care of oil as we can in good weather.

Q. Suppose whaling ships to have been near the Richmond in sight of her from the 5th to the 18th of August, wanting from 600 to 1,000 barrels of oil each to complete their full cargo, how far would it be an important object to them to secure oil from the Richmond to fill up, and why so?

A. I should think it important; I think it would be less trouble to get the oil from the Richmond, and that they could *have* done it in shorter time than to catch it. It would be important to secure in order to go home; if they did not secure it in that way, they might not succeed in getting a full cargo.

Q. Would it not have been more desirable to get whalebone even than oil, if the vessels were nearly full?

A. Yes, sir; I should think it would; you could stow a greater amount of bone than you could oil in the same room; *and* there are generally more or less places where you can stow bone that you cannot oil.

Q. Where the Richmond was, how soon might seamen on board of her or on shore near her, expect to see other whaling ships after the 2d of August of that year?

A. They would likely see ships every day in clear weather.

Q. When did you get to the Sandwich Islands after that?

A. On 13th of October.

Q. Did the ships generally stop there?

A. Yes, sir; it is less than half way from Behring's Straits home—about five weeks' sail from Behring's Straits.

Q. Is there a demand and market there for oil, bone, whale-boats, whaling gear, and ship's apparatus generally, and was there at that time?

A. There is generally a market there for a small quantity of oil, not of bone; it is generally shipped home; oil may also be shipped home; vessels are *going* home frequently which are not quite full; boats and whaling gear, there is generally a market there for them; there are different prices for whale-boats any where from $50 to $80, sometimes higher; ropes and such stuff as that, there is generally a market for that; vessels fit out there for another

whaling season; the season up by Behring's Straits extends from 1st of May to about 10th or 15th of September.

Being *cross-examined*, he says:

After the ship is full of oil, we never *whale* any longer for bone; I never sent any bone home from any other point than the Sandwich Islands; I dont think I took any oil after I saw the Richmond ashore.

Q. What were the chances of filling a ship wanting 500 barrels after you saw the Richmond ashore?

A. I think it would have been a very small chance; I don't recollect of seeing more than two whales taken after that; I saw the Gen. Scott get a whale, and *another* ship.

If you had been wanting 500 barrels to fill up on the 2d of August, and had found the Richmond ashore, on what terms would you have taken that quantity from her?

A. I don't think I should have been willing to have given more than a dollar a barrel for it at that time.

Q. Would you have taken the oil on freight instead of filling your ship?

A. No, sir; if I had only 500 barrels, I *think* I should have run the risk of catching them.

Q. If you had required 800 barrels to fill?

A. No, sir; I don't think I should have been willing to take it on freight.

Q. Was not the whaling better that season in the sea of Anadir than in the Arctic Ocean?

A. It was in the first of the season; I was not there, but ships that were there done better than what they did at the northward.

Q. Suppose you had been obliged to throw *overboard* shooks, to make room for oil from the Richmond, what would you have given per barrel for it on the 5th August?

A. I don't think I would have been willing to give much of anything for it.

On further *direct:*

Q. Would you not expect the casks taken from the Richmond, independently of the oil contained in them, to be worth as much as shooks for the like quantity of oil thrown away?

A. I should think 6 casks of shooks would be about the size of one set up.

Q. *Suppose* shooks were thrown overboard, which, if set up, would contain only enough to fill the ship, say 800 barrels, in that case would not the casks themselves received from the Richmond be worth as much as the shooks thrown over?

A. Yes; if you take 800 barrels from the Richmond, they would be worth as much as 800 thrown over, if they were as good *ones*.

Q. Suppose you had been full, or nearly full of oil, do you say

you would not still have taken bone on freight to the Sandwich Islands for a fair price?

Yes, sir; we would have taken oil, if we had anywhere to put in.

Q. When you have spoken of giving $1 a barrel for oil, have you any reference to whalebone in connection with oil?

A. No, sir.

Q. Would or not vessels, which, on the 5th of *August* were not more than half full, have been likely to give more for the oil in the Richmond than vessels nearly full?

A. No, sir, I do not know as they would, because they would be likely to stay over another season, if not more than half full.

Q. Might not they still carry it to the Sandwich Islands to advantage?

A. I don't know as there would have been any great advantage. It would depend upon what freight they could have got for it altogether.

Q. *Suppose* one-half of its value at the Sandwich Islands was allowed to such a vessel not full, merely for taking it there, would it not be advantageous?

A. I should think, if a ship would carry 1,500 barrels, it would be an advantage to take it in that way.

Q. According to your judgment, would or not the oil be more valuable to a vessel over half full, and which expected to go home without staying another season, but was yet uncertain of getting full, than *to* any other?

A. I don't know as there would be any great advantage. I think it would be more valuable to such a vessel.

Being further *cross-examined:*

Q. If you had been in the neighborhood of the Richmond, wanting 1,500 barrels to fill up, and whales very plenty, seen every day, would you have been willing to have given a dollar a barrel to have it taken out of the wreck yourself, say on the 5th of August?

(Objected to, as containing a supposition *not* applicable to the case.)

A. I think I should have been willing to have given a dollar a barrel under any circumstances, if I was sure of whales.

What would you have charged to have taken the oil out of the Richmond to the Sandwich Islands?

A. I should have wanted half of what it was worth.

GEORGE C. BENJAMIN.

Sworn this 4th day of April, 1851, before me.

WILLIAM DODGE,
Commissioner of Deeds.

Filed, *June 4th*, 1852.

1088

U. S. DISTRICT COURT,

WALTER R. JONES and others
vs.
The cargo, materials, &c., of the ship Richmond.

We hereby consent that Captain Samuel C. Woodruff be examined, *de bene esse*, as a witness on the part of the libellants, at the office of the libellants' proctors, No. 72 Wall street, on the 19th day of March instant, at 12 o'clock at noon of that day; that the deposition of said witness so to be *taken*, when sworn to before a United States Commissioner or a Commissioner of Deeds, may be read in evidence on the trial of this cause, with like effect, subject to all legal exceptions, as if the same had been regularly taken before a United States Commissioner, under an order issued for that purpose, and that the same need not be filed, but may remain in the possession of the libellants' proctors, a copy being furnished to the claimants' proctors.

New York, March 19, 1852.

STEVENS & HOXIE,
Claimants' Proctors.

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of New York.

WALTER R. JONES & others, libellants,
vs.
The CARGO, MATERIALS, &c., of the SHIP RICHMOND, POST & SHERRY and N. & G. HOWELL, claimants.

Southern District of New York, ss.

Samuel C. Woodruff, being sworn *and* examined, *de bene esse*, on the part of the libellants, under and by virtue of the annexed consent, doth depose and say, in answer to the several questions put to him, as follows, viz:

I reside at Bridghampton, on Long Island; I expect to leave there soon, to go to San Francisco, in California; I do not expect to come to New York again, *until* just before I sail from this port; I have sailed two voyages as master of a whaling ship; I had sailed seven voyages in the whaling business before I was master; it had been a common thing for whaling ships to send whalebone home from the Sandwich Islands; I did so on both voyagse in which I sailed as master; if a ship has a good deal oil on returning to the Sandwich Islands from a cruise, *and* designs to go another season, it is a common thing to send part of the oil home by another vessel,

sometimes they send the whole; that is very common; prior to this last year, the usual freights home from the Sandwich Islands, have been one cent a pound for the bone, and about eight cents a gallon for the oil; the freights have been less the last year.

Q. How does whalebone compare with whale oil, as to the facility and bulk of stowing it on board a *ship?*

A. We usually carry bone in between decks, never in the lower hold; and the space of 100 barrels of oil will take as much or more than 30,000 pounds of bone; I have demonstrated this by measure; this means solid stowage; there is always a great deal of room on the top of the casks of oil, in which bone can be stowed without disturbing oil; we sometimes take the sail room and put bone in, and put the sails in the cabin; ships *generally* have a sail-room; we frequently carry bone on deck to the Sandwich Islands from the northwest coast; we don't generally get any after we leave there.

Q. Suppose your vessel were full of oil, under what circumstances would you stop to get bone in addition?

I don't think I would stop to kill a whale, although it is sometimes done; if I could see a dead whale, I would take his bone out, or if I could see a wreck, and I *could* buy it, I would take it.

Q. Why not stop to kill a whale for his bone?

A. Want of time; I should want to get along home; another consideration would be, that I should not think the bone I would get out of a whale would pay for the risk I would run in having a boat stove, and crew hurt, &c.

Q. Have you been up where the Richmond was wrecked?

A. I have; not exactly to the spot, but on the shore near to where she was said to have been *wrecked.*

Q. Which way are the whales generally going in August, in that neighborhood?

A. Northward.

Q. Would it or not be important to vessels in that neighborhood in the early part of August, which wanted from 600 to 1000 barrels to fill up; to secure oil enough to fill without incurring the hazards of catching it?

State if you can the difference, if any, between a vessel thus nearly full, and one which had but little oil?

(Objected to.)

A. I should *think* it would be important to secure that oil; a vessel nearly full would not like to run the risk of not getting full, and of coming home without being full when she could get it sure; that would be my opinion, at any rate.

Q. Would bone be more or less important and valuable to get than oil?

A. It would be more important decidedly because it would not

take up so much room and would be more valuable, and *you* could ship it at the Islands if you did not want it on board, or if you had not room; bone can be shipped much cheaper than oil, compared to its value; there are always vessels enough at Sandwich Islands to receive bone; if a ship is full of oil, you can still take bone to the Sandwich Islands; it would not be advisable to take it on a passage around Cape Horn; they almost all of them bring their bone home, what they can get below decks, but not on deck *round* Cape Horn.

Upon being *cross-examined*, he says:

I never have sailed in the libellants' employment; I never knew vessels go whaling for bone alone; it is not common for vessels after they have filled up with oil, and the bone taken with that oil, to continue whaling for bone; it is sometimes done; I have no personal knowledge of its ever having been done, and I have never done it myself; captains have told me so, and I believe them; I *sent* the bone home from the Sandwich Islands on the two voyages I went as master to get more room; I have sent it between the seasons, and when I have been bound home both; I had been out fourteen months when I first sent bone home, and I had been whaling on the coast of Kamskatka; my vessel was not full; I had returned to the Sandwich Islands to refit, partly for the purpose of sending bone home; I intended to remain over another *season;* I had 1,400 barrels of oil on board at the time, and between 18 and 19 thousand pounds of bone; they were right whales, and don't yield so much bone as polar whales; the proportion of bone in polar whales to the oil is as much as 2,000 pounds of bone to 100 barrels of oil; most of the captains, I believe, allow more; that is the average according to my experience; I didn't expect at that time to get more than the usual proportion of *bone* to oil, but I thought that would lumber me up, and I wanted to get this out of the way; we have to handle the bone a good deal to stow the oil between decks, when it is put in before the casks are full; I sent home all the bone I had when I went to the Sandwich Islands. There is another reason for sending it home, that if it is kept where it is warm while it is wet, it will spoil; if kept upon deck it will not; it is not customary for vessels full, going home, to stop at *the* Sandwich Islands, and take the bone on board; they often ship it to make room for wood and water and other things; there are vessels that stop there generally about this season, from September to December, to take freights; it is customary to reserve room appropriate for stowing oil, to stow bone, if we can't find any other place, but we generally have room enough; I mean by this, the bone we took from the same whales as we got the oil *from;* it is very rare that we exclude oil for bone; we generally have room enough; I would delay to get bone from a dead whale, or from a wreck anywhere; that is, any part of the world, and near the close of the

season, to take it from a wreck; I was up near St. Lawrence Bay, where the Richmond was wrecked; I landed there the second day of September, 1850; at that season I had never been there before; I had passed *there* in June, going up, and I was coming out then; had never whaled there until that year; when I said important for vessels to secure the oil without the danger of catching whales, I mean buying it; I meant buying it from a wreck; there would be no danger in taking oil from a wreck, the vessel being over on her side, if it was smooth; it is impossible to say how it would be with a rocky shore and rough *weather*, unless I know the exact situation; it is attended with difficulty and hardship to get oil out from a vessel wrecked or one at sea; if there was no sea and the vessel lay still, there would be no difficulty in hooking on to the barrels in the lower hold that were floating around.

Q. If your vessel was wanting 600 or 800 barrels to fill up, and the whaling was good at the time, how much would you be willing to give per barrel for *oil* in a wreck at that place?

(Objected to.)

A. It is a hard question to answer, as I don't know the state of the wrecked ship, how she lay, &c.; without that knowledge it would be impossible for me to say; I never knew vessels to take oil or bone for freight from Behring's Straits to the Sandwich Islands; I wouldn't stop whaling to take oil or bone on freight from Behring's Straits to the Sandwich Islands; not *unless* I got a very high freight, and the vessel was on shore, or something of that kind; it would not be of much importance for a vessel nearly full to secure oil from another vessel, if the whaling was good at the time and whales in sight; the price of oil from another vessel would depend upon the circumstances of getting it from that vessel, and the state of the whaling at the time, and the chances of filling by taking whales.

Q. If *the* whaling was good, and whales enough in sight to fill your ship, and your ship in readiness for whaling, requiring 600 or 800 barrrels to fill, how much would you give for oil, to take it yourself from a wrecked ship on shore?

(Objected to.)

A. If the wrecked vessel was lying so that I could hoist it out easily and without danger, I would sooner do it than whale for it, and I think I would give as much as 2 dollars a barrel for *it*, and perhaps more; my reason would be that there might one day be plenty of whales in sight and the next day none; if it was attended with difficulty or danger I would not give so much for it; can't say how much I would give for it, unless I knew how the whaling was; even if it was attended with difficulty and danger and the whaling was poor, I would sooner take it than do nothing.

On further direct cross-examination:

In my last answer I have spoken of the oil alone; not in connection with bone.

Q. If bone could be readily got from a wreck and brought in boats to your ship, the distance of only about a mile, upon what terms, a proportion of its proceeds to be accounted for at home, would it, in your judgment, be better to take it than continue whaling, even if the whaling were good?

(Objected to.)

A. If the *whaling* were good, I should not be willing to stop whaling at less than two-thirds of the proceeds, though I believe they might make money at half; whether I would stop whaling and take it at two-thirds depends upon circumstances; whether the weather was good; whales may be plenty and not catch them.

Q. What number of barrels do you call good whaling for a month together?

A. If I could get 700 barrels a month, I should *think* I done very well; that is called good whaling; even 500 barrels a month would be good business.

SAMUEL C. WOODRUFF.

Subscribed and sworn this 19th day of March, 1852.

NATHL. B. HOXIE,
Commissioner of Deeds.

Filed June 4th, 1852.

Exhibits produced on the hearing.

Memorandum of facts agreed to about nautical instruments.

Lawrence Willetts, book-keeper, and G. C. Black, prove that the cost was of

One	Chronometer	$237 50
"	Ditto	200 00
"	Barometer	15 00
"	Spy-glass	10 25
	was	$462 75

For the ship Richmond, which was sent aboard of her at New York, and paid for by her owners before the commencement of the present voyage.

Agreed to by

MR. O'CONNOR.

Filed June 4th, 1852.

STATEMENT of the quantity of whale oil purchased from the wreck of whale-ship Richmond, of Cold Spring, in the Northern Arctic Ocean, in August, 1849, by Captain Frederick M. Hallock, of ship Panama, of Sag Harbor.

Gross rod guage.....	20,903 gallons
12 per cent. off for quarter guage.....	2,508 "
	18,395 gallons,

being 584 barrels, at 75c. per barrel, $438 00.

New York, June 7th, 1850.

N. & G. HOWELL,
Owners of Ship Panama.

(Endorsed.)

Mem. of sale of cargo, N. Y.
N. & G. Howell's statement, 7th June, 1850.
Handwriting Claimants' Howell admitted, and marked B. C. B. M.
Filed June 4th, 1852.

Account sales by Grinnell, Minturn & Co., of parts of cargo brought in by the E. *Frith:*

Nett proceeds	20	Casks	Sperm,	due	June 6, 1850.....	$2,854	42
" "	1	"	"	"	Jan. 18, 1851.....	32	32
" "	139	"	Whale,	"	Dec. 24, 1850.....	8,065	93
" "	8	"	do.	"	Sept. 9, "	800	28
" "	48	"	do.	"	Nov. 5, "	4,813	13
" "	29	"	do.	"	Oct. 19, "	1,708	70
" "	7	"	do.	"	" 16, "	139	79
" "	74	"	do.	"	Nov. 13, "	8,628	33
" "	356	bundles	Whalebone,		Nov. 28, "	13,033	00

Annexed are copies of account sales resulting as above, rendered by us to Messrs. Post & Sherry, for oil and whalebone sent to us by them for sale, and represented by them as for account of the ship Elizabeth Frith.

GRINNELL, MINTURN & CO.

New York, Sept. 19, 1851.

U. S. DISTRICT COURT.

WALTER R. JONES et al.
agst.
The CARGO, MATERIALS, &c., of the SHIP RICHMOND.

The above and annexed may be read, if the facts *thereby* ap-

pearing are admissible, with like effect as if proved by a witness.

New York, 19th Sept., 1851.

STEVENS & HOXIE,
Claimants' Proctors.

Copy sales of 356 bundles of whalebone, received per General Warren, for account of Messrs. Post & Sherry.

1850.					
Nov. 18. A. Paxon,	218,	20,972lb.,	39c.	$8,179	08
" " A. Woodhull,	115,	11,186	40	4,474	90
" 23. W. Beale,	9,	470	37	173	90
Dec. 13. H. L. Roath,	2,	202	43	86	86
Dec. 16. Solomons & Co.,	12,	1,306	42	548	52
	356 bundles.			$13,462	76

Charges.

Freight, $34 $\frac{13}{100}$; weighing, $17 $\frac{06}{100}$. carting, $8 75	$59	94
Storage, labor, and fire insurance	33	26
Commissions, 2½ per cent	336 56	429 76
Net pro., due Nov. 28, 1850		$13,033 00

E. E.

New York, Dec. 18th, 1850.

(Signed) GRINNELL, MINTURN & CO.

Copy sales of 74 casks whale oil received per Gen. Warren, for account of Messrs. Post & *Sherry*.

1850						
		378				
Oct. 24. Tucker C. & Co.,	2	8	370 gl.	55,		203 50
		2247				
Handers & R.,	12	44	2203 "	"	1211 65	
		515				
	3	17	588 "	53,	316 94	1528 59
		499				
29. Ceuliss N. & Co.,	3	10	489 "	55,		268 95
		342½				
29. T. K. Sharp	9	16½	332 "	"		182 60
		143				
30. Tucker C. & Co.,	1	2	141 "	"		77 55
		178				
Mar. 1. Flanders & Co.,	1	4	174 "	"		95 70
		1529½				

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"	"	48	"	do.	"	Nov. 5, "	4,813	13
"	"	29	"	do.	"	Oct. 19, "	1,708	70
"	"	7	"	do.	"	" 16, "	139	79
"	"	74	"	do.	"	Nov. 13, "	8,628	33
"	"	356	bundles	Whalebone,		Nov. 28, "	13,033	00

Annexed are copies of account sales resulting as above, rendered by us to Messrs. Post & Sherry, for oil and whalebone sent to us by them for sale, and represented by them as for account of the ship Elizabeth Frith.

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Dec. 16. Solomons & Co.,	12,	1,306	42	548 52
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Storage, labor, and fire insurance	33 26	
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30. Tucker C. & Co.,	1	2	141 "	"		77 55
		178				
Mar. 1. Flanders & Co.,	1	4	174 "	"		95 70
		1529½				

2. C. Tucker & Co.,	16	26 177	1503½	"	"	826 92
6. J. N. Lucky,	5	5 235	172	"	"	94 60
8. F. Flanders & W.	1	5 130	230	"	"	126 50
12. W. Hoyt,	1	4 574½	126	"	"	66 78
16. Curtiss M, & Co.,	17	18	561½	"	"	297 59
	74 cases,					$3,769 28

Charges.

Freight $33 $\frac{60}{100}$, guaging $7 $\frac{54}{100}$,	$41 14	
Cooperage and labor,	558	
Commission 2½ per ct.,	94 23	140 95
Net pro., due Nov. 13th, 1850,		$3,628 33

E. E.
New York, Nov. 27th, 1850.
(Signed) GRINNELL, MINTURN & CO.

Copy sales of 7 casks oil received per Planter, for account for Messrs. Post & Sherry.

1850.

Oct. 9. D. Farrington,	6	6 222	217 gls.	55c.,		119 35
25. R. Stead,	1	2 50	48	"	54c.,	25 92
	7					145 27

Charges.

Guaging 56c., freight $1 29	$1 85	
Commission, 2½ per cent	3 63	
		5 48
Net pro., due Oct. 16, 1850		$139 79

E. E.
New York, Oct. 25, 1850.
(Signed) GRINNELL, MINTURN & CO.

Copy sales of 29 casks whale oil, received per Gen. Warren, for account of Messrs. Post & Sherry.

1850.

Oct. 4. Fredlin, C. & Co.	3	$\frac{43}{70}$	413 gs.,	55c.		$227 15
" 7. R. Reed,	24	$\frac{2718}{54}$	2,664	"	"	1,465 20

" 23. Foales & Co.,	1 $\frac{47}{1}$	46	"	"	25 30
" 24. Waldron,	1 $\frac{110}{2}$	108	"	"	57 24
	29 casks,				$1,774 89

Charges.

Freight $15 37, guaging $3 63	$19 00	
Cooperage and labor	2 62	
Commissions, 2½ per cent	44 37	
		65 99
Net pro., due Oct. 19, 1850		$1,708 90

E. E.
New York, Oct. 25, 1850.
(Signed) GRINNELL, MINTURN & CO.

Copy sales of 48 casks whale oil, received per Gen. Warren, pr. account of Messrs. Post & Sherry.

1850.

Sept. 3. Syles & Polhamus, 48 $\frac{9775}{143}$ 9,632 gs., 52c., 40 days		$5,008 64
Interest		60 50
		$5,069 14

Charges.

Freight $46 50, guaging $6	$52 50	
Cooperage	75	
Commissions and guarantee, 4 per cent	202 76	
		$256 01
Net pro., due Nov. 5, 1850		$4,813 13

E. E.
New York, Sept. 23, 1850.
(Signed) GRINNELL, MINTURN & CO.

Copy sales of 8 casks whale oil, received per Gen. Warren, for account of Messrs. Post & Sherry.

1850.

Sept. 2. W. S. Barker, 8 $\frac{611}{14}$ 1,597 gs., 52c.		$830 44

Charges.

Freight $7 65, guaging $1	$8 65	
Cooperage and labor	75	
Commissions, 2½ per cent	20 76	
		$30 16
Net pro., due Sept. 9, 1850		$800 28

E. E.
New York, Sept. 9, 1850.
(Signed) GRINNELL, MINTURN & CO.

Sales of 139 casks whale oil, received per Gen. Warren, for account of Messrs. Post & Sherry.

1850.

May 21. S. Judd, Sons & Co., 118 $\frac{136}{237}\frac{93}{\cdot 2}$ 13,456½ gs., 51c., 7 mos..... $6,862 82

S. Judd, Sons & Co., 21 $\frac{3003}{501\cdot 2}$ 2,952½ gs., 49¾c..... 1,468 87

139 casks..... 8,331 69

Add 127 days' interest 173 93

$8,503 62

Charges.

Freight $79 50, guaging $16 97..... $96 47

Cooperage and labor..... 3 00

Commissions and guarantee, 4 per cent..... 340 22

$439 69

Net pro., due Dec. 24, 1850..... $8,063 93

E. E.

New York, June 6, 1850.

(Signed) GRINNELL, MINTURN & CO.

Copy sales 21 casks sperm oil, received per General Warren, for account of Post & Sherry:

1850.

May 29. Pepperman & Co., 20 $\frac{2566}{131}\frac{91\cdot 2}{1\cdot 2}$ 2,438 gs., 121c..... $2,949 98

" 30. Retd. to P. & S., 1 cask.....

21 casks.

Charges.

Freight $12 04, guaging and testing $5 25.... $17 30

Cartage 38–37, and cooperage and labor $3 76. 4 13

Commissions, 2½ per cent..... 73 75

$95 56

Net pro., due June 6, 1850..... $2,855 42

add

Jan. 18. Bellows & Co., adulterated } 1 cask, $\frac{43}{4}$ 37 gs., 85c..... $33 15

Less commmissions, 2½ per cent..... 83

Due Jan. 18, 1851..... $32 32.

New York, June 6, 1850

(Signed) GRINNELL, MINTURN & CO.

Filed June 4, 1852.

At a stated term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the city of New York, on Friday, the first day of October, in the year of our Lord one thousand eight hundred and fifty-two:

Present, the Honorable Samuel R. Betts, District Judge—

WALTER R. JONES and others
vs.
The CARGO, &c., of the Ship Richmond,

On filing a statement of the testimony, as agreed upon by the proctors for the respective parties, and, on motion of Messrs. Moore & McDaniel, proctors for the libellants and appellants, it is ordered, that the same be incorporated in the decree and apostles as the testimony on the hearing.

U. S. DISTRICT COURT.

WALTER R. JONES and others,
vs.
The CARGO, &c., of the ship Richmond,
various claimants.

Let the *time* within which the libellants may prepare and serve a proposed case or statement of the evidence taken on the trial be extended 10 days from this date, with liberty to the claimants, within five days thereafter, to propose amendments thereto, which, if not agreed to, may be submitted to the Judge for settlement.

New York, 30th June, 1852.

STEVENS & HOXIE,
Cl'mts' Proctors.

Ten days' further time allowed to serve a proposed case in this cause, pursuant to the consent before given.

New York, 9th July, 1852.

STEVENS & HOXIE,
Proctors for Claimants.

In pursuance of the foregoing consents, the following case or statement of the evidence and proceedings on the trial, has been prepared, served, and settled.

MOORE & McDANIELS,
Proctors for Libellants.

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of New York.

WALTER R. JONES and others,
against
The cargo, materials, &c., of the Ship Richmond, N. and G. HOWELL and POST & SHERRY, *claimants.*

On the trial of this cause, which was commenced on the third

day of June, one thousand eight hundred and fifty-two, and continued for several days, the libel, the answers of the claimants, N. & G. Howell and Post & Sherry, and the replication thereto, were read. The depositions of Chas. H. Reeves, (sworn to 18th September, 1850,) William Cherry, (sworn *to* 28th September, 1850,) George G. Benjamin, (sworn to 4th April, 1851,) and Samuel Woodruff, (sworn to 19th March, 1852,) all taken by consent, were then read in evidence on the part of the libellants, subject to all just exceptions thereto, excepting a conversation stated by the said Charles H. Reeves, (see folios 14 & 15 of his deposition,) which was objected to on his examination, and the objection acquiesced in, and the part *consented* to be laid aside, as stated in the deposition; which several depositions were filed, and can be referred to.

Samuel C. Pierson, being sworn and examined as a witness for the libellants, testifies as follows: I have been a ship-master; have been up near where the Richmond was wrecked, and have pursued the whaling business there; it is usual to go up there in July, and until first September; I have found *the* whales there generally bound to the northward; it has been the general custom of the whaling vessels to stop at the Sandwich Islands; two-thirds of them at least stop there both going to, and coming from, the North Pacific whaling grounds; as many as one hundred ships stop there every season; of this number about fifty ships recruit there to whale another season; they often send home parts of cargo on freight; *it* is the general custom to send the whalebone home, and sometimes they send the oil home; whaling geer is in demand there, and usually sells higher at the Sandwich Islands than here; boats, anchors, and oil are often sold at the Sandwich Islands; whalebone is not usually sold there; it is sent home; it is about a thirty days' voyage from Behring's Straits to the Sandwich Islands, in the month of August; the course *south*, a little easterly; it is not a dangerous passage.

On *cross-examination:* The place of the wreck of the Richmond, I understand, was Behring's Straits, on the Asiatic coast, near St. Lawrence Bay; I do not know the precise place, not having seen it; I heard where it was; I have known oil sold at the Sandwich Islands; the ordinary price there was from thirty to thirty-five cents a gallon while I was *there;* that was in October, 1850; I had been there four times before; I was there in 1845; I think oil sold there then at thirty cents per gallon; settled with crew at that rate there; I was there in 1846 and 1848, but know of no sales then; I know of sales having been made there in 1850; I know of one sale made there at forty cents a gallon; I know of other sales made there, but not the price; oil was sold from the ship Levant, *I* don't know to whom; I think it was taken on board the Canada, of New Bedford; only heard of it; William Lloyd, who sold it, said so; I went whaling but once in Behring's Straits; that was in 1850; I was up

in the vicinity of St. Lawrence Bay, from the 10th to 17th July, and returning west to the Sandwich Islands full; on getting to Behring's Straits, we wanted about 300 barrels to be full; my ship carried 3,500 *barrels.*

On *further direct examination:* I never knew oil and bone to be sold together at one price; it is a common thing to settle with portions of the crews for their share at the Sandwich Islands; it was an established rule to settle with them at the consul's office; the prices varied for such settlements 30 to 40 cents a gallon for the oil; 31½ gallons of oil make a barrel; the oil is *contained* in casks of various different sizes, but is counted by the barrel of 31½ gallons.

William B. Farlin, being sworn and examined for the libellants, testified as follows: I am book-keeper of the firm of Willetts & Co., of New York; they are financial agents of a large number of whaling ships, some forty or fifty ships, and receive very many accounts of whaling vessels; on 15th April, 1849, they received at New York 66,171 gallons sperm *oil*, 12,229 gallons of whale oil, and 12,685 pounds of whalebone, as coming from the ship Richmond, from the Sandwich Islands, and sold the same in May, 1849, for account of the owners of that vessel; the net proceeds were $11,445; the next year, 1850, whale oil averaged in New York about forty-nine cents a gallon, and whalebone about thirty-five cents a pound; 31½ gallons of oil are always taken for a barrel.

On *cross-examination:* I know not by what vessel, nor at what port the oil and bone arrived; the sales were made in May, 1849, on account of the ship Richmond, and owners; I know from the books; I was not present at the sale; I can't tell the price in May, 1850.

Notice to the claimants, Post and Sherry, to produce account sales received by them from merchants of the oil and bone brought in by the Elizabeth Frith was admitted, *and* original account sales not being produced, the consent of claimants' proctor and the statement and accounts sales of Grinnell, Minturn & Co., were read as evidence, and made exhibits, and may be referred to by either party.

The libellants having rested, the counsel for claimants read the interrogatories put by the libellants to the claimants, N. and G. Howell, and their *answers* to the same, (as on file,) subject to all just exceptions thereto. Libellants' counsel objecting to the right claimed by the claimants of reading in their own behalf the answer to the sixth interrogatory, and particularly the last sentence thereof, after the words, "individual account." Libellants' counsel, in explanation of the date supposed to be referred to in that clause, and

to show that such date must have *been*, after the commencement of the present suit, read in evidence a statement marked B, dated 7th June, 1850, the signatures to which was admitted by claimants' counsel to be in the handwriting of one of the claimants' firm of N. & G. Howell, and which was filed as an exhibit, and may be referred to. On the part of the claimants, the depositions of the following named persons were read, subject to all just exceptions, and filed, *namely:*

William H. Cooper (taken 30th August, 1850, by consent.) Frederick M. Hallock (taken 21st June, 1850, by consent.) John P. Carr, (taken before a commissioner, on 12th September, 1850, and objected to as without sufficient notice, and on various grounds, but admitted.)

Augustus E. Halsey,
(sworn to 17th July, 1850.)
Thomas *Sabina*,
(sworn to 17th July, 1850.)
Charles R. Winters,
(sworn to 16th October, 1851.)
John Sweeny,
(sworn to 30th April, 1852.)
Jonas Winters,
(sworn to 16th July, 1850.

} All taken by consent.

The last person named, Jonas Winters, being present in Court, and one of the owners of the Elizabeth Frith, was *sworn* and examined orally in behalf of both sets of claimants, subject to all just exceptions, (who after hearing his said deposition read, confirmed the same,) and further testified as follows, viz:—

My brother, the master of the Richmond, died about a month after we left the wreck, about sixteen days before we reached the Sandwich Islands; he was five days sick in his last illness; I knew the hour for the sale from my *brother;* it was not specified, I believe, in any of the written notices; the hour was eight o'clock in the morning; this was four or five hours after sunrise; the understanding between my brother and the other captains was, that they were to pay at the Sandwich Islands; we did not pay there because he was dead; we (Captain Hallock and myself) offered to settle with Mr. Reeves, *the* first mate, as his successor; he said he would have nothing to do with it; a few of the oil casks received from the Richmond on board of our vessel were distinguishable from our casks, say fifteen to eighteen, not more; these were not common oil casks, but appeared to have had other liquor in, wine casks; I think my brother said they had contained bread; the rest were the same kind of casks as ours, but *inferior;* as to the portion of oil and bone from the Richmond, which was on board of the E. Frith

before the sale, my brother, the master of the Richmond, said, in the presence of Captain Tinkham, we should take it on board for safe keeping until a sale, as the Richmond was at any time liable to go to pieces; Captain Tinkham was engaged in boiling out the blubber he had before secured; that is what was said, as *nigh* as I can recollect; before any of the oil or bone from the Richmond was taken on board the E. Frith, it was announced that the oil was to be sold; that is, enough to fill the ships with a proportion of the bone to go with each parcel, as near as I can recollect; I was present at the sale of the ship; I was not interested directly nor indirectly in the purchase of the ship, as I know of, nor in any oil or *bone*, except what was taken in my vessel; the ship was put up with everything attached to her, including boats, and articles belonging to her on shore; I bid one dollar, but it was not struck down to me; I did not bid more than $5, because I did not want it; I had no room for anything more; the book now produced is the log-book kept on board of the E. Frith on that voyage; it was kept by the *witness*, Mr. H. Cooper, who was mate; the notes in the margin have been made since.

The counsel for claimants then read to the court the entries in such log-book for several days prior to the 2d August, 1849, and the counsel for libellants, in continuation and explanation, read the entries therein, from the 2d to the 12th of August, which entries were as follows, viz:

"Monday, July 30th, 1849, comes *in* with fine weather and light winds from the south and east; employed in boiling and stowing down 80 barrels in fore hatch. At 9 a. m. lowered and struck and killed a whale, took him alongside and let him lay. At 2 p. m. came to anchor in twenty-one fathoms of water, in company with the Junior of N. B.—so ends—no observation."

"Tuesday, July 31st, 1849, comes in with fine *weather* and light airs; employed in cutting, boiling, and stowing. Saw forty or fifty whales to-day, but it was hard to strike them; they are very shy. Four ships in sight. Stowed down forty-eight barrels—so ends—no observation."

"Wednesday, August 1st, 1849. This day comes in with light breezes and foggy weather. Saw plenty of whales, and chased, but did not get hold. Employed in boiling and stowing *down* in fore hatch; put down 85 barrels. Some of the natives came on board —so ends—no observation."

"Thursday, August 2nd, 1849. All this day had thick weather and strong winds from the south. Employed in boiling and stowing in the steerage hatch; put down 50 barrels. Took our anchor and stood to the E. S. E. At 4 p. m., double reefed the topsails; it

was a gale of wind and bad sea. On this day saw no whales or ships. Think we have now *about* 2,300—so ends—no observation."

"Friday, August 3d, 1849. This day comes in with strong gales from the south and east, and thick, foggy weather. Employed in boiling and other ship's duty. At 6 p. m., wore ship and stood to the eastward. Saw no whales to-day, nor the land—so ends this day—lat. 65° 20′ N. This day, the 3d, some of the crew cut 4 or 5 oil lashings, and spoiled them."

"Saturday, August 4th, 1849. This day begins with strong winds from the south and east, and *thick*, foggy weather. Finished boiling the first part, latter more moderate. Sounded and got twenty-three fathoms water. Saw no whales to-day—so ends."

"Sunday, August 5th, 1849. This day commences with moderate winds from the north and east, and thick weather. At 6 p. m., made the land and stood in; at 9, one of the Richmond's boats came on board from the shore. Saw plenty of whales, but did not lower for any; spoke the Panama, of S. H.; stowed down 95 in the main *hatch*, and checked it off. Latter part calm—so ends—lat. 65° 23′ N."

"Monday, August 6th, 1849. This day commences with fine weather and light air from the north and east. At 6 p. m., came to anchor in the mouth of St. Lawrence Bay, within one mile of the Richmond, and at 8 a. m. went on board and commenced taking out oil; took out about 250 barrels—so ends—all well.

"*Tuesday* August 7th, 1849. This day comes in with light airs from the north and west. All hands are employed in taking out oil from the Richmond, and bone. At 6 a. m., the Junior, of N. B., came in; latter part, the Panama, of S. H., came in to anchor —so ends."

"Wednesday, August 8th, 1849. This day comes in fine weather. All hands employed in taking oil out of the Richmond. At 6 p. m., took one of our men on shore and *buried* him; he was found dead in his berth. Latter part, stowed down in the main hatch between decks—so ends this day."

"Thursday, August 9th, 1849. This day comes in strong winds and cloudy weather. Employed in getting oil; started with a raft, and the raft rope parted, and we lost 13 casks of oil. Latter part, fine weather; got some bone and other stuff from the wreck—so ends."

"Friday, August 10th, 1849. This *day* comes in with light

breezes from the south and west, and fine weather. Employed in stowing down oil and getting from the Richmond. Took a raft of 30 casks and about 30 barrels and breaks and some bone—so ends."

After such reading of the log-book, the further *direct examination* of the said Joseph Winters, on the part of the claimants, was proceeded with, and he further testified as follows:

When I went to work to take oil out of the Richmond, my ship (the Elizabeth Frith) and her cargo were worth, at that place, fifty thousand dollars; I was part owner. I went on board of the Panama once while she was there; she was about 400 tons, and had, as I understood, about 3,700 barrels of oil on board. (Claimants' counsel proposing to prove the value of the Panama and cargo by the opinion of this witness, the *evidence* was objected to, but admitted, subject to the objection, and the witness said:) the Panama and her cargo were worth there about $55,000, before they took any oil from the Richmond; I saw the natives there.

On cross-examination: At the time of the wreck of the Richmond, I had been a master whaler seven years, and had been engaged in the business seventeen years, I was thirty-six years old; my brother, the master of the Richmond, was *about* twenty-eight years old; had been engaged in whaling twelve years in different stations as cooper, boat-steerer, mate, and master, and had been a master about three years; I had two other brothers with me; Silas, the oldest, was boat-steerer and steward, and was about twenty-five years old; Charles was cooper, and about twenty-three years old; as part owner of the Elizabeth Frith, my share was one-48th; as master, my share *was* one-seventeenth; the share of Silas was one-sixtieth, and of Charles one-fifty-fifth; I cannot say how much money I had on board on the 8th of August; I had not so much as $500; I cannot say I had so much as $100; I cannot say within $200 how much I had; on the 8th of August, or at the time of the sale, no bill of the oil or bone was made out to me; none to the master of the Panama, nor of the Junior, to my knowledge; I cannot tell whether I made any entry myself of *the* purchase at or about the time of the sale; none is made in the log-book; I had a private memorandum book; I never gave any written obligation to any one; I know of none having been given by the master of the Panama or of the Junior; my brother, the master of the Richmond, had very little money with him when he died, about a dollar and a half; I think Mr. Carr was to have two and a half per cent. for services *as* auctioneer; there was no payment made to him, nor offer to pay, on the voyage to my knowledge; I kept an account on board of the Elizabeth Frith, as the oil from the Richmond was stowed down under deck; it is in Court; I kept no account

of the oil or bone as it was taken out of the Richmond; no account was taken of the oil lost in rafting, nor of its quantity; none by me; none to my knowledge by any one; no one kept any *account* of what was delivered from the Richmond; no account was ever given of what was lost on the raft; that was oil which we had taken out of the Richmond and commenced towing to the Elizabeth Frith; I cannot say how much oil there was in the casks lost, and some of the casks we took from the Richmond were not full by a good deal; in stating the value of the Panama and her cargo at $55,000, I estimated 3,300 barrels of oil, and *valued* the ship and her outfits at $25,000; the bone at or about $6,000, and the oil at the balance, that is 3,300 barrels of oil, at $24,000; I meant the value then at that time near the wreck; I made the valuation of the Elizabeth Frith and her cargo on the same principle and at the same rate for the oil; I never heard before of a sale of oil from a whaling ship in that region; none between whaling ships; it is *not* usual to trade oil between the ships; at the time the sale was determined upon we supposed there might be other ships along soon; I knew the Panama was not far off; I had spoken her the day previous; knew of no others being near only the Panama and the Junior; the idea of a sale was first suggested by me; this was after the master and mate of the Richmond told me to come and take it; I think it *was* about twenty-four hours after we first saw the wreck before we commenced work; I had seen Captain Tinkham before; I did not suggest to my brother any other course than selling the oil; the Panama, I think, had the most oil, but I estimated it per barrel at the same rate; the oil on board of the Richmond before she struck at same rate for 3,600 barrels of oil, was worth from twenty-five to thirty thousand dollars; the oil in my ship, I *think*, was worth $12 per barrel, and over; more than $10 a barrel, certainly.

On further direct examination: The account kept by me of the oil stowed down, which I referred to on cross-examination, now produced, is identified by me; it is all in my handwriting, and was written by me in my private memorandum book before mentioned at the time the oil was stowed down. The account referred to was then read, and the whole *entry* was in these words, viz:

1849.—Account of oil stowed which belonged to ship Richmond, of Cold Spring:—

August 6,	stowed down,	.....	115	barrels.
" 7,	"	"	110	"
" 8,	"	"	114	"
" 10,	"	"	60	"
" 13,	"	"	94	"
" 14,	"	"	46	"
" 15,	"	"	60	"
		186,88 gallons,	599	barrels.

The witness proceeded: that amount we took into the Frith; I did not know anything else that could be done with the oil except selling it; freight could not be got for it to any *place* of safety; no one there would have taken it on freight, there were too many whales around for that; it could not have been stowed on the land with any prospect of safety; no one would stay there to look after it.

On further *cross-examination:* I made no entry nor account of the whalebone; I know of none having been made anywhere; there is none in the log-book or the memorandum book.

On further *direct examination:* We did not *get* our full proportion of bone in the Elizabeth Frith, from the Richmond; not as much as the oil would call for; the usual proportion of bone is from 14 to 18 pounds to a barrel of oil; the whole proceeds 2,000 to 2,400 pounds of bone each head; we wanted four whales to fill up the Elizabeth Frith, of about 150 barrels each.

David R. Drake sworn and examined on the part of the claimants, testified as *follows*, viz: I reside at Mattituck, Long Island; was formerly a ship master; am now a farmer; I have been whaling 15 years ending in 1850, and have been five years a ship master; I begun before the mast and rose up by gradations; I have whaled in the vicinity of Behring's Straits; was there in 1849; was master of the ship Washington, of Sag Harbor; I saw the wreck of the ship Richmond on 18th August, 1849. (Witness marks on a chart the spot.) *There* was a point of land half a mile south of the place where the wreck lay; she was wholly abandoned; I went on board of her; she could not be got off nor anything be got from her; I did not attempt it; I could see not more than a foot of her above the water forward; the cabin was about three and a half feet out of the water; in the middle part, the water was within eighteen inches of the top of her plank shire; I wanted about 150 barrels to be *full;* I made no attempt to get anything out of her; Behring's Straits was first known as a whaling ground in 1849; I went in the Straits that year and was in about six weeks; I had very good whaling there; I took about 2,000 barrels of oil in that time; when I saw the Richmond there were plenty of whales in sight; I did not catch any after that time; I was not in condition to take much; I had no *more* casks set up; I thought it best to proceed to the Sandwich Islands and recruit, taking sperm in my way home; I did so and went home; it is usual to recruit as often as twice a year or oftener; Sandwich Islands the usual place; we get vegetables, wood, and water, and stay from ten to thirty days in port; we often send home oil and bone from the Sandwich Islands in other vessels; we send bone when going *ourselves*, if our decks or upper works are not tight, to keep it from getting wet; we send oil and bone home when we want to stay over another season; send it to make more room;

it is not difficult to get there; in 1849, owing to gales in the Arctic Ocean and loss of anchors, they were in great demand and much enchanced in price; I heard of these disasters seven days before I saw the wreck of the Richmond; they could *not* have been known on the 12th of August, where the Richmond lay; they occurred on the 11th and 12th of August, in the Arctic Seas; no vessels but whalers appear in those seas; I never heard of any except a Russian Government ship; there are no settlements there; never could get property taken on freight from there; I never heard of an instance of taking any on freight.

Q. What would you consider oil and bone worth there in a wreck?

(Objected to.)

A. It would depend on a variety of circumstances; I would not have been willing to give more than 75 cents or a dollar at most; according to my understanding and knowledge of the circumstances, I don't think others would give more; the proportion of bone, on an average is 1,400 or 1,500 pounds to 100 barrels of oil; the inhabitants in that region are Esquimaux Indians, as near I can *tell*; only savages; no civilized persons within 1,000 miles; a Russian settlement nearest, a small military post; I have never landed there; it is no place of trade; if the cargo of the Richmond had been landed on the coast there, I think it would not have been found in safety the next year; the natives would have knocked the hoops off the casks for the iron; all savages will steal an iron hoop wherever they *can* find it; if not knocked off, the hoops will rust off in a single year; some in less than six months; this was in August, and no vessel would be expected there until the middle of July of the next year; hoop poles for wooden hoops could not be got there; no wood grows there, nor within 700 or 800 miles, as I have been told; the average rate of prices allowed for oil and bone at the Sandwich Islands, *previous* to 1850, on paying off crews, I think was about twenty cents a gallon for oil and fifteen cents a pound for bone.

On *cross-examination:* I left the coast in the Washington on 19th August; we caught, during the period between 5th August and 19th August, I suppose, perhaps 500 barrels of oil; we arrived at Sandwich Islands about 3d of October; came home that season; arrived at Sag Harbor on 3d May, 1850; when we were at the Sandwich Islands the news had arrived of the *disasters* in the Arctic Sea, increasing the price of articles; the first vessel I heard of going into the Arctic Sea for whales was the ship Superior, in 1848; in those seas we sometimes lay at anchor three or four days; there are soundings; the currents are strong; I never heard of the wreck of the Richmond until I saw it; I was with my ship within a mile of the wreck, and went to it in a boat and saw what it was; I can't say *whether* it was then high or low tide; I saw no casks

of oil that were easily to be obtained; I saw the vessel had been stripped; I state the date of seeing it, 18th August, from having looked at the log-book which is not here; it has gone out to sea again in the vessel; it is usual to note in the log-book the day of catching each whale, and the number of barrels it produces; I have not examined the log-book to see how many we caught between 5th and 19th August; I *never* knew of any trading of oil up there between ships; I never saw any sales made in that region.

Robert P. Reynard, sworn and examined for the claimants, testifies as follows: I reside at New Bedford; I have been a whaler twenty-one years; I began as a boy and came up to be master, and have been a master ten years; I have been in Behring's Straits, whaling, and in the Asiatic Sea as far as 65° N.; I *was* first there this last year, 1851, on the Asiatic side; I went as far as 60° N., in 1843, on the American side; Behring's Straits was first known as a whaling ground in 1848; I always understood the first whaling vessel that went up there was the Superior, Captain Roys; in 1851 I I made the land between St. Lawrence Island and the main, the 12th and 14th July; I left there on the 22d July; I took 600 barrels after I entered by St. Lawence Island; I had 2,000 barrels before I knew of a whaling vessel being lost there—the French ship Cosmopolite, near Cape Chaplain; she had some oil on board; I had been wrecked myself, since I was master, at one of the Society Islands; there were some few foreigners there; I know of no way in which the cargo of a wrecked whale ship could be saved up there except by whale ships; they would not take it on freight nor buy it at much of a price; I *never* knew of any such wrecked cargo being got away on freight; I should get off as soon as I could, and if any one wanted the oil they could have it; if I was offered 75 cents a barrel I would take it; a whale ship taking 500 barrels, would not fill up the balance on freight; I never knew nor heard of any property being taken from such remote places on salvage; it is not practicable to land cargo and leave it *over;* the natives would break open casks to see what was inside or for the hoops.

On *cross-examination:* I should be in the power of the man making any offer, and would have to take whatever he offered.

Azor Tabor, sworn and examined for the claimants, testified as follows: I reside at New Bedford; am a whaler; have been a ship-master nine months, and followed the sea sixteen years before that, starting before the mast and whaling all the time; I *have* passed through the Anadir Sea and Behring's Straits first in 1851; Behring's Straits has been a fishing ground since 1848; I was wrecked in 1851, on the East Cape, just after passing north through the Straits; I had five hundred barrels of oil; the vessel was worth $35,000; I know of no way in which the vessel could have been saved, or anything be made of her cargo; there were no vessels

there to take freight, only whalers; I don't think it *could* be put on shore and saved; the natives are very fond of iron and wood; also a thievish set; they would come on board and steal pieces of iron; I know the witness, John P. Carr; he lives at the same place; he is now absent on a whaling voyage; I have been as high as 70° 40′ N. up in the Icy or Arctic Sea; if I had oil out there in a wrecked vessel, I should be willing to sell at any price; should be obliged to sell it or lose it entirely; oil has no *price* there; would sell it for anything that would be worth taking.

William Lowen, being sworn and examined for the claimants, testified as follows: I belong to Sag Harbor; am a whaler and ship-master; I have been in the North Pacific Ocean, whaling; I never sold any oil at Sandwich Islands for forty cents a gallon; we usually paid at the rate of eight cents a gallon for freight of oil home from the Sandwich Islands.

Silas Winters, *sworn* and examined for the claimants, testified as follows: I was in the Elizabeth Frith; knew the ship Richmond, of Cold Spring; supplies were furnished from the Frith to the Richmond to the amount of $300, at various times, on the way up to the Arctic Ocean; Capt. Winters, the master of the E. Frith, kept the account of it; at the time of the wreck both vessels were well supplied with provisions.

William H. H. Moore, sworn and *examined* for the libellants, testified that he had made the computations stated in the paper, which he produced, and the computations were correct.

The paper was put in evidence, and was as follows:

According to the account sales of Grinnell, Minturn & Co., of part of the oil and bone from the whole *cargo of the E. Frith*, 34,136 pounds of bone are accounted for, 41,266 gallons of oil, gross measure, and 40,472 gallons of oil, net, are accounted for.

(The difference between gross measure and *net* is less than two per cent.)

Taking the gross measure of the oil at 31½ gallons to the barrel, the number of barrels accounted for is of

Sperm	81$\frac{16}{63}$ barrels.
Common Whale	1228$\frac{47}{63}$ "
Total barrels	1310

At the *average* of these rates of sale, 18,868 gallons gross measure of the common whale oil produced	$9,340 55
600 pounds of bone produced	2,290 77
Total (oil and bone)	$11,631 32

(Charges of sale, weighing, &c., all deducted.)
This is about $15 60 a barrel for common whale oil.

According to the account sales of Slate, Gardner & Howell, of the *cargo from the Panama*—

(See answers to interrogatories,)

There were of the whole cargo 115,678 gallons, gross measure, 110,564½ gallons as *sold* net.

(Difference less than five per cent.)

Taking the gross measure of the oil at 31½ gallons to the barrel, the number of barrels accounted for is 3,668 and a fraction, (and at the measurement as sold 3,509⅔ barrels.) At the rates of these sales, 20,903 gallons gross *measure* produced..... $8,427 32
3,000 lbs. do..... 932 83
This is about $13 21 a barrel for common whale oil.

100 barrels of oil, according to Frith's sales, worth..... $1,550 40
100 do. do. Panama. 1,321

If 24,000 pounds of bone could be stowed in same space they would be worth
Per Frith sales..... $9,163 08
Per Panama 7,462 64

If 30,000 *pounds* of bone could be stowed in same space they would be worth
Per Frith sales..... $11,120 51
Per Panama..... 9,328 33

Result as to facility of stowage—average of both sales.
About *seven* times more in *value* of *bone* can be stowed in the same place than of oil.
100 barrels of oil could have been tossed overboard.
Loss..... 1,300 } dollars.
Or..... 1,600 }

24,000 pounds of bone could be taken *in* same space.
Gain..... 7,500 } dollars.
Or..... 9,200 }
Or 30,000 and gain would be..... 9,300 } dollars.
Or.....11,000 }

George C. Black, being called as a witness, and not being in court, it was admitted that he would testify that the cost of nautical instruments for the ship Richmond, which were sent on board of

her at New York, and paid for by her owners before the commencement of her last voyage, was as follows, viz:

One Chronometer	$237 50
One do.	200 00
One Barometer	15 00
Spy-glass	10 25
	$462 75

And this admission was agreed to be of like effect as if the witness had appeared and so testified.

The claimants produced various policies of insurance effected in the ships Elizabeth Frith and Panama, and their outfits and

The *Panama* and her outfits and takings were insured by such policies to the amount of $20,000, being valued therein at $28,000—the vessel being valued at $12,000, and the outfits and takings at $16,000.

The Elizabeth Frith and her outfits and takings were insured by such policies to the amount of $22,500, being valued therein at $30,000—the vessel being valued at $14,000, and the outfits and catchings at $16,000. The policies were in the usual form of policies for whaling vessels, which may be referred to. Two of the policies on the Panama described the adventure as "on a whaling voyage, and until her return to Sag Harbor, with liberty to stop at all ports and places for recruits, and for all necessary purposes." One was "with liberty to ship home, sell, or dispose of, in exchange for cargo and catchings."

One of the policies of the Elizabeth Frith was "for a whaling voyage," "with liberty to ship home or sell catchings, and to trade at all ports and places for refreshments or recruits, and to sell."

Another for $2,500 was with liberty to take freight when homeward bound.

The premiums were about 3 per cent. per annum.

MOORE & McDANIEL,
Proctors for Libellants.
STEVENS & HOXIE,
Proctors for Claimants.

Filed October 1, 1852.

MONDAY, *June* 7, 1852.

Mr. Lord argues the cause for the libellants.
Mr. O'Connor argues for the claimants.
Mr. Lord argues for the libellants.
Curia advisari vult.

At a stated term of the District Court of the United States of America, for the Southern District of New York, held *at* the City

Hall, in the city of New York, on Tuesday the 29th day of June, in the year of Lord one thousand eight hundred and fifty-two:

Present—*The* Hon. Andrew T. Judson, District Judge—

WALTER R. JONES
vs.
The CARGO of the SHIP RICHMOND,

This case having been heard on the pleadings and proofs, and argued by the advocates for the respective parties, and *due* deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the libel filed in this cause be dismissed, each party paying his own costs.

(Endorsed.)

Vol. 8—No. 228—United States District Court, for the Southern District of New York—Walter R. Jones et al. vs. The Cargo of the ship Richmond—Proctor—Final decree.

Filed 29th day *of* June, 1852.

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of New York.

WALTER R. JONES, Joseph Sampson, John H. Jones, George T. Trimble, John H. Jones, Charles P. Stewart, Amos Willets, Samuel Willets, Joshua T. Jones, Jacob C. Hewlett, Charles H. Jones, and Charles Hewlett, libellants,
vs.
The cargo, materials, and furniture, of the Ship Richmond, unsold, and *and* the proceeds of sales, William K. Post and John Sherry, in behalf of themselves and others, owners of the bark Elizabeth Frith, and all others interested in the voyage of said bark, claimants; also, Nathan *How* and Gilbert Howell, in behalf of themselves and Lewis Howell, owners of the ship Panama, and all others interested in the voyage of said ship, *claimants.*

Sir: Please to take notice, that the libellants, John H. Jones, and others, appeal to the Circuit Court of the United States, for

the Southern District of New York, from the decree made by the District Court in this cause.

New York, July 9th, 1852.

Yours, &c.,
MOORE & McDANIEL,
Libellants' Proctors.

To GEO. W. MORTON, esq.,
Clerk, &c.

Gents: Take notice, that the persons proposed by *the* libellants as their sureties on the appeal, (of which notice is given as above,) are Elzey S. Powell, merchant, of No. 104 Wall street, in the city of New York, and William H. H. Moore, of said city, and that the stipulations on such appeal will be given by them at the office of the clerk of this court, on the 31st day of August instant, at ten o'clock in the forenoon of that day.

New York, August 27th, 1852.

Yours, &c.,
MOORE & McDANIEL,
Libellants' Proctors.

To Messrs. STEVENS & HOXIE,
Claimants' Proctors,

We hereby admit due service of notices, of which the foregoing are copies.

New York, 27th August, 1852.

STEVENS & HOXIE,
Proctors for claimants.

Giving of stipulations postponed until to-morrow, 1st September, at 10 o'clock, a. m.

GEO. W. MORTON,
Clerk.

Filed September 1st, 1852.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
For the Southern District of New York, in the Second Circuit.

WALTER R. JONES and others, libellants and appellants, vs. The cargo, materials, &c., of the Ship Richmond, &c., &c., WILLIAM K. POST and others, claimants and *appellees.*	Bond for costs.

Know all men by these presents, that we, Elzey S. Powell and William H. H. Moore, are held and firmly bound unto the above named claimants and appellees, in the sum of five hundred dollars,

to be paid to the said claimants and appellees, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated *the* first day of September, in the year of our Lord one thousand eight hundred and fifty-two.

Whereas, the above-named libellants have prosecuted an appeal to the Circut Court of the United States, for the Southern District of New York, in the Second Circuit, to reverse the final decree rendered in the above entitled suit, by the Judge of the District Court of the United States, for the Southern District of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect and answer all damages and costs, if they fail to make this appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

E. S. POWELL, [L. S.]
WM. H. H. MOORE, [L. S.]

Sealed and delivered, and taken and acknowledged, this first day of September, 1852, before me.

JOSEPH BRIDGHAM,
U. S. Comm.

UNITED STATES OF AMERICA,
City and County of New York, ss:

Elzey S. Powell and William H. H. Moore, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of one thousand dollars, over and above all his just debts and liabilities.

E. S. POWELL,
W. H. H. MOORE.

Sworn to this first day of September, A. D. 1852, before me.

JOSEPH BRIDGHAM,
U. S. Comm.

(Endorsed.)

Vol. 8, No. 288, U. S. Circuit Court.

WALTER R. JONES, et al, libellants and appellants,
vs.
The cargo, &c., of the brig Richmond, WM. R. POST, et al., claimants and appellees.

Bond for costs; Moore & McDaniel, pr. for libt. & applts.
Filed Sept. 1st, 1852.

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the Southern District of New York, in the Second Circuit.

JOHN H. JONES, Joseph Sampson, Walter R. Jones, George T. Trimble, John D. Jones, Charles P. Stewart, Amos Willets, Samuel Willets, Joshua T. Jones, Jacob E. Hewlett, Charle H. Jones and Charles Hewlett, libellants and *appellants*.

vs.

The CARGO, materials, and furniture of the Ship Richmond, unsold, and the proceeds of sales, William K. Post and John Sherry, in behalf of themselves and others, owners of the barque Elizabeth Frith, and all others interested in the voyage of that barque, claimants; also Nathan Howell and Gilbert Howell, in behalf of themselves, and Lewis Howell, owners of the ship Panama, and all others interested in the voyage of said ship, *claimants*.

To the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit:

The petition of appeal of the libellants above-named respectfully sheweth:

That on or about the twenty-third day of May, in the year of our Lord one thousand eight hundred and fifty, the libellants above named, on behalf of themselves and all others interested, filed their *libel* in the District Court of the United States, for the Southern District of New York, against the cargo, materials, and furniture, of the ship Richmond, or such part thereof as might be found within the said district unsold, and the proceeds of such thereof as might be sold, and against all persons intervening for their interest in the same in a cause of adjustment of salvage, civil and maritime.

In and by which libel and *complaint*, the said libellants made various allegations as by the same or a copy thereof, to which your petitioners pray leave to refer, will appear, and they did thereby, among other things, allege that the said ship Richmond was upon and in the successful prosecution of a whaling voyage, and that a considerable cargo of whale oil, sperm oil, and whalebone, of great value, had been taken and secured in and on board of the said ship, until on or about the *second* day of August, in the year one thousand eight hundred and forty-nine, when, having nearly a full cargo on board, well secured, she, in a fog, ran on or between some rocks,

on the west coast of Behring's Straits, and lay upon or fast to such rocks; and while so disabled, the whaling barque Elizabeth Frith, of Sag Harbor, and the whaling ship Panama, of Sag Harbor, being in the same neighborhood, there were taken and secured on board of the said barque Elizabeth *Frith*, and on board of the said ship Panama, certain quantities of whale oil and whalebone, which were in and had been procured by the officers and crew of the said ship Richmond, and had been prepared, manufactured, secured, and stowed away in the said ship Richmond, and constituted a part of the cargo of the said Richmond; and that there had also been received and taken on board of said barque Elizabeth Frith, at or about the same time, certain articles, being a *part* of the furniture and materials of the said ship Richmond, belonging to the owners thereof.

That the said barque Elizabeth Frith had safely arrived at the port of Sag Harbor, and the said ship Panama at the port of New York, with the said parts of cargo, materials, and furniture on board, and the same were then within said district, and of great value, and no proceeding had been taken, or appeared to be contemplated, by or on the *part* of the masters or owners of the said barque and of the said ship, respectively, towards adjusting or fixing any amount of salvage or freight as due thereon; on the contrary, the agents and owners of the said barque and ship, respectively, had professed an intention to sell, had sold, or were about to sell, the said parts of cargo as their own, unjustly setting up a pretended sale by the person acting as *master* of the said ship Richmond, for a merely nominal price, which had not been paid; and that the libellants, at the time of the obtaining and saving of the said cargo, were the owners of the said ship Richmond, her tackle, apparel, and furniture, and, as such owners, became and were entitled to the ownership, possession, and control, and disposition of the said cargo and proceeds thereof, subject only *to* a fair and reasonable amount of salvage and freight as the said Court might adjust; and the said libel and complaint prayed process in due form of law against the said parts of the cargo, materials, and furniture of the said ship Richmond, within the said district, remaining unsold, and against the proceeds of such thereof as should have been sold, and that all persons having or pretending any right, title, or interest in the said parts of *the* cargo, materials, and furniture of the ship, within the said district, and remaining unsold, and in the proceeds of such thereof as should have been sold, might be cited to appear and answer in the premises, and that the said Court should pronounce in favor of the libellants for the ownership, possession, control, and disposition of the said cargo, materials, and furniture of the said ship Richmond and the proceeds thereof, subject only to *such* fair and reasonable amount of salvage and freight, or either of them, as might be just, and the said Court would adjust and fix the amount thereof; and that upon payment thereof, the balance of the said cargo,

materials, and furniture, or the proceeds thereof, might be decreed in favor of the libellants, and that the said Court would decree such further relief, or such other relief, to the libellant as should to law and justice appertain, and to condemn *all* persons intervening for their interest or claims in the said cargo, materials, and furniture, or the proceeds thereof, in costs, and otherwise right and justice to administer in the premises.

Whereupon process was issued out of the said District Court against the said parts of cargo, materials, and furniture of the ship Richmond remaining unsold, and the proceeds of such as had been sold, and the said parts of cargo, materials, and furniture sold, and the proceeds of *sales* having been thereupon attached under such process, and due notice given William K. Post and John Sherry, in behalf of themselves and others, owners of the said barque Elizabeth Frith, and all others interested in the voyage of the said barque, appeared and filed their claim and answer to the said libel; and Nathan Howell and Gilbert Howell, on behalf of themselves, and Lewis Howell, owners of the ship Panama, and all others interested in the voyage of said ship, *also* appeared and filed their claim and answer to the said libel. To which answer the libellants filed replications in the usual form, maintaining their said libel to be true and sufficient, and the said answers to be untrue and insufficient as by the same as will fully appear.

And afterwards the said cause came on to be heard on the pleadings and proofs therein before the said District Court, and such proceedings were thereupon had, that recently and since the last *term* of the said Circuit Court the said District Court made an order or decree directing the said libel to be dismissed without costs to either party, as by the said pleadings an order or decree will fully and at large appear.

And from the order and decree of the said District Court made in the said cause dismissing the said libel, the said libellants appeal to the next Circuit Court of the United States, to be held for the said *Southern* District of New York in the Second Circuit, that is to say, to a specially appointed term of the said Circuit Court, appointed to be held at the City Hall, of the city of New York, on Tuesday, the fourteenth day of September, 1852, and pray that the allegations made and the proofs taken in the said District Court may be certified to the said Circuit Court, and that the said order or decree dismissing the said libel may be reversed, and a decree be *made* as prayed for in and by the said original libel. But these appellants do not claim to make any new allegations nor pray different relief, but pray for a new decision upon the allegations and proofs made in the said District Court, and upon such further or other proofs as may be taken in this Court.

MOORE & McDANIEL,
Proctors for Libellants.
CHAS. B. MOORE, *Advocate.*

U. S. CIRCUIT COURT.

JOHN H. JONES and others
vs.
The CARGO, MATERIALS, &c., of the SHIP RICHMOND unsold, and the proceeds of *sales*, &c., WILLIAM K. POST and JOHN SHERRY, &c., claimants.

U. S. OF AMERICA,
Southern District of New York, ss.

William V. McDaniel, of the city of New York, in said Southern District, being duly sworn, says, that on the ninth day of September, instant, he served a copy of the foregoing petition of appeal on Stevens & Hoxie, esquires, proctors for the appellees herein, by delivering the same to Mr. Stevens, one of the said proctors, personally.

W. V. McDANIEL.

Sworn to this 7th day of September, 1852, before me.
R. E. STILWELL,
Dep. Clerk.

Filed Sept. 9, 1852.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

[L. S.] I, George W. Morton, clerk of the District Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify, that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the city of New York, in the Southern District of New York, this eighteenth day of October, in the year of our Lord one thousand eight hundred and fifty-two, and of the independence of the said United States the seventy-seventh.

GEO. W. MORTON,
Clerk.

At a special term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, held at the City Hall, in the city of New York, on Tuesday, the twentie thday of September, in the year of our Lord one thousand eight hundred and fifty-three:

Present, the Honorable Samuel Nelson, an Associate Justice of the Supreme Court of the United States—

WALTER R. JONES and others, libellants and appellants,
vs.
The CARGO of the SHIP RICHMOND, &c., claimants and respondents,

The appeal from the decree of the District Court in this case coming on to be heard—

Mr. Lord reads the evidence in the Court below, on the part of the libellants and appellants;

Mr. Hoxie reads the evidence in the Court below, on the part of the claimants and respondents.

At a term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, held at the City Hall, in the city of New York, on Wednesday, the twenty-first day of September, in the year of our Lord one thousand eight hundred and fifty-three:

Present, the Honorable Samuel Nelson, an Associate Justice of the Supreme Court of the United States—

WALTER R. JONES and als. appellants, &c.,
vs.
The CARGO of the SHIP RICHMOND, &c., respondents,

This cause being still on hearing—

Mr. Moore is heard on the part of appellants;
" O'Conor " " " appellees.

At a special term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, held at the City Hall, in the city of New York, on Friday, the twenty-third day of September, in the year of our Lord one thousand eight hundred and fifty-five:

Present, the Honorable Samuel Nelson, an Associate Justice of the Supreme Court of the United States—

WALTER R. JONES and others, appellants,
vs.
The CARGO, &c., of the SHIP RICHMOND, claimants and respondents,

This cause being still on hear'g—

Mr. O'Conor concludes on part of appellees;
Mr. Lord is heard in reply.

Cur. adv. valt.

CIRCUIT COURT OF THE UNITED STATES,
For the Southern District of New York.

A copy from the minutes of June 23, 1855.

JOHN H. JONES and others, libellants and appellants,
vs.
The CARGO, MATERIALS, &c., of the SHIP RICHMOND, N. & G. HOWELL & POST & SHERRY, claimants and respondents.

It being suggested to the Court, that since this cause was argued in this Court, two of the libellants and appellants, Walter R. Jones and Joshua T. Jones, have departed this life, leaving last wills and testaments, appointing the libellant, Charles H. Jones, executor of their respective wills, and that letters testamentary have been duly granted in this State to the said Charles H. Jones, as such executor, under both wills, on motion of Moore & McDaniel, proctors for libellants, and by the consent of Mr. Hoxie, proctor for claimants and respondents,

It is ordered, that this cause proceed in the names of the surviving libellants, with the addition of the appearance and designation of the said Charles H. Jones, individually, and as executor of the last wills and testaments of Walter R. Jones and Joshua T. Jones, deceased, and that in all subsequent proceedings the said Charles H. Jones, besides representing his individual interest, may also be held to represent the interests which the said Walter R. Jones and Joshua T. Jones may have severally had at the time of their respective deaths, so far as such interests may be deemed not to have devolved upon the surviving libellant.

This order may be entered before entering the order on the decision of Judge Nelson.

STEVENS & HOXIE,
Proctors for Claim'ts.

At a stated term of the Circuit Court of the United States of America, for the Southern District of New York, in the second circuit, held at the City Hall, in the City of New York, on *T* the twenty-first day of September, in the year of our Lord one thousand eight hundred and fifty-five:

Present—The Honorable Samuel Nelson, an Associate Justice of the Supreme Court of the United States—

JOHN H. JONES and others, libellants and appellants,
vs.
The CARGO, MATERIALS, &c., of the SHIP RICHMOND, POST & SHERRY, and others, and N. G. HOWELL, and others, claimants and respondents,

This case having been heard, on the appeal taken from the final decree entered in the District Court of the United States, for the Southern District of New York, dismissing the libel herein, and having been argued by the advocates for the respective parties, and due deliberation being had in the premises: on motion of Moore & McDaniel, proctors for the libellants and appellants, it is now ordered, adjudged, and decreed by the circuit court, that the decree of the said district court be and the same is hereby reversed, and the sales set up and claimed by the several respondents declared to be invalid, and to have passed no property or title to the said respondents, or either of them, but that the said respondents, in behalf of themselves and others interested or concerned, are entitled to a moiety of the nett proceeds, in the New York market, of the articles brought in their respective ships, and sold by the said respondents, respectively, and that they pay to the appellants the other moiety of the said proceeds, with interest, to be computed at the rate of seven per cent. per annum from the date of the sales of the said articles. And it is further ordered, unless the parties agree to an apportionment of the said proceeds upon the principles above stated, and file a stipulation specifying the same, that it be referred to John W. Nelson, esq., clerk of this court, as commissioner to take proofs, estimate, compute, and ascertain the amount of such moiety of the net proceeds in the New York market of the whale oil and whalebone referred to in the pleadings, with interest to be paid by the said respondents respectively; and the said clerk is hereby directed, from the whole amount thereof, after allowing a moiety to the claimants in this suit as *salvus*, to report the amount payable to the appellant by the respondents respectively, and to make his report herein with all convenient speed. And upon the coming in and confirmation of such report, or upon the filing of such stipulation, it is ordered that the claimants, William R. Post and John Sherry, and their sureties, pay to the appellants the amount so reported, or agreed upon, for the articles brought in by the barque Elizabeth Frith, as mentioned in the pleadings, with interest from the date of such report or stipulation, and that the claimants, Nathan Howell and Gilbert Howell, and their sureties, pay to the appellants the amount so reported or agreed on as to the articles brought in by the ship Panama, as mentioned in the pleadings, with interest thereon from the date of such report or stipulation, and that the appellants have execution therefor, and that the appellants

also recover their costs of this appeal, to be taxed and equally borne by the claimants and respondents, that is to say, one-half by the claimant of the Elizabeth Frith, and one-half by the said claimant of the Panama.

(Endorsed.)

Sept. 20, 1855.
Approved: S. NELSON.

U. S. CIRCUIT COURT.

JOHN H. JONES and others, libellants and appellants,
vs.
The CARGO, MATERIALS, &c., of the SHIP RICHMOND, N. & G. HOWELL and POST & SHERRY, claimants and respondents.

It is hereby stipulated and agreed, for the purpose of an adjustment under the decision made in this court, that the net proceeds, in the New York market, of the articles brought in by the ship Panama, and sold by the respondents, N. & G. Howell, which were a part of the cargo of the ship Richmond referred to in the pleadings and decree in this suit, amounted to the sum of eight thousand six hundred and eighty-five dollars, on the tenth of May, eighteen hundred and fifty, that being the average of the dates and amounts upon and in which such proceeds, after deducting all expenses, were payable in cash, and that a moiety of such proceeds amounted to the sum of four thousand three hundred and forty-two dollars and fifty cents. That the interest, computed at the rate of seven per cent. per annum, upon such moiety of said proceeds, pursuant to said decree, from the date of the sales of the said articles to the date of this stipulation, amounts to the sum of one thousand six hundred and forty-six dollars and fifty cents, so that the amount decreed to be paid by the said claimants and respondents, Nathan Howell and Gilbert Howell, and their sureties, by *by* the said decree, including interest to the date of this stipulation, and exclusive of their portion of costs, is five thousand nine hundred and eighty-nine dollars.

This stipulation is given without prejudice to an appeal from the decree to be entered herein.

Dated New York, 10th October, 1855.

STEVENS & HOXIE,
Proctors for Claimants.
MOORE & McDANIEL,
Proctors for Libellants.

(Filed Oct. 10, 1855.)

U. S. CIRCUIT COURT.

JOHN H. JONES and others, libellants and appellants,
vs.
The CARGO, MATERIALS, &c., of the SHIP RICHMOND, N. & G. HOWELL and POST & SHERRY, claimants and respondents.

It is hereby stipulated and agreed, for the purposes of an adjustment under the decision made in this court, that the net proceeds, in the New York market, of the articles brought in the ship Elizabeth Frith, and sold by the respondents, Post & Sherry, which were part of the cargo of the ship Richmond referred to in the pleadings and decree in this suit, amounted to the sum of eleven thousand three hundred and thirty-nine dollars and forty-six cents, on the fifth day of November, in the year eighteen hundred and fifty, (that being the average of the dates and amounts upon and in which such proceeds, after deducting all expenses, were payable in cash,) and that a moiety of such proceeds amounted to the sum of five thousand six hundred and sixty-nine dollars and seventy-three cents. That the interest, computed at the rate of seven per cent. per annum, upon such moiety of said proceeds, pursuant to said decree, from the date of the sales of the said articles to the date of this stipulation, amounts to the sum of one thousand nine hundred and fifty-six dollars and eighty-four cents, so that the amount decreed to be paid by the said claimants and respondents, William R. Post and John Sherry, and their sureties, by the said decree, including interest to the date of this stipulation, and exclusive of their portion of costs, is seven thousand six hundred and twenty-six dollars and fifty-seven cents.

This stipulation is given without prejudice to an appeal from the decree to be entered herein.

Dated New York, 10th October, 1855.

STEVENS & HOXIE,
Proctors for Claimants.
MOORE & McDANIEL,
Proctors for Libellants.

Filed, Oct. 10, 1855.

Whereupon, on the 12th day of October, 1855, the appellants' costs of their said appeal in this court were taxed at the sum of $\$464\frac{16}{100}$.

U. S. CIRCUIT COURT,
Southern District of New York.

JOHN H. JONES and others,
libellants,
vs.
The cargo, materials, &c., of the Ship Richmond, POST & SHERRY and N. and G. HOWELL and others, claimants.

To the Honorable, the Supreme Court of the United States:

The appeal of Post & Sherry, and others, and N. & G. Howell, and others, the above-named claimants, respectfully showeth, that on the twenty-third day of May, A. D. 1850, the above-named libellants filed their libel in the District Court of the United States, for the Southern District of New York, against the cargo, materials, and furniture of the ship Richmond, or such parts thereof as might be found within the said district unsold, and the proceeds of such thereof as might be sold, and against all persons intervening for the interest in the same, in a cause civil and maratime, in and by which libel the said libellants made various allegations, as by the same, a copy thereof, to which your petitioners pray leave to refer, will appear, and they did thereby, among other things, allege that the said ship Richmond was upon and in the successful prosecution of a whaling voyage, and that a considerable cargo of whale oil, sperm oil, and whalebone, of great value, had been taken and secured in and on board of said ship, until on or about the second day of August, 1849, when, having nearly a full cargo on board, well secured, she, in a fog, ran on or between some rocks on the west coast of Behring's Straits, and lay upon or fast to such rocks, and while so disabled, the whaling barque Elizabeth Frith, of Sag Harbor, and the whaling ship Panama, of Sag Harbor, being in the same neighborhood, there were taken and secured on board the said barque Elizabeth Frith, and on board of the said ship Panama, certain quantities of whale oil and whalebone, which were in and had been procured by the officers and crew of the said ship Richmond, and had been prepared, manufactured, secured, and stowed away in the said ship Richmond, and constituted a part of her cargo. That the said barque Elizabeth Frith had safely arrived at Sag Harbor, and the said ship Panama at New York, with the said parts of cargo, &c., on board, and no proceedings had been taken or appeared to be contemplated by the masters or owners of said barque and said ship, respectively, towards adjusting or fixing any amount of salvage or freight as due therein; on the contrary, the agents and owners of said barque and ship, respectively, had professed an intention to sell, had sold, and were about to sell, the said parts of cargo as their own, unjustly setting up a pretended sale, by the person acting as master of said ship Richmond,

for a merely nominal price, which had not been paid. That the libellants are the owners of the said ship Richmond and cargo, and the said libel prayed for process in due form against said parts of cargo, &c., and that said Court should pronounce in favor the libellants for the ownership, possession, control, and disposition of the said cargo, &c., and the proceeds thereof, subject only to such fair and reasonable amount of salvage and freight, or either of them, as might be just, and the said Court would adjust and fix the amount thereof; and upon payment thereof, the balance of said cargo, &c., or the proceeds thereof, might be decreed in favor of the libellants, &c.

That process thereupon was issued out of the said District Court against the said parts of cargo, &c., of the said ship Richmond remaining unsold, and the proceeds of such as had been sold, and the said parts of cargo, &c., sold, and the proceeds of sales having been attached under process, and notice given, your petitioners, William R. Post and John Sherry, in behalf of themselves and others, owners of the said barque Elizabeth Frith, and all others interested in the *in the* voyage of the said barque, appeared and filed their claim and answer to said libel, and gave the stipulations required by law; and your petitioners, Nathan Howell and Gilbert Howell, in behalf of themselves, and Lewis Howell, owners of the said ship Panama, and all others interested in the voyage of the said ship, also appeared and filed their claim and answer to said libel, and gave the stipulations required by law; that the libellants filed replications to said answers, and such proceedings were had in the said cause, that on the twenty-ninth day of June, A. D. 1852, a final decree was made therein, by the said District Court, wherein it was adjudged that the said libel be dismissed without costs to either party, as by said pleadings, order, and decree will fully and at large appear.

And that, after such final decree, the libellants appealed therefrom to the Circuit Court of the United States, for the Southern District of New York, and the said cause was removed thereby into the said Circuit Court, and then tried anew; and such proceedings are had in the said Circuit Court, that afterwards, on the twenty-first day of September, A. D. 1853, the said Circuit Court made a final decree in said cause, whereby it was adjudged and decreed that the said decree of the District Court be reversed, and the sales set up and claimed by the several respondents declared to be invalid, and to pass no property or title to the said respondents, or either of them, but that the said respondents, in behalf of themselves and others interested or concerned, are entitled to a moiety of the net proceeds in the New York market of the articles brought in their respective ships and sold by said respondents respectively, and that they pay to the appellants the other moiety of the said proceeds, with interest, to be computed at the rate of seven per cent. per annum from the date of the sales of such articles; that the respondents, Post & Sherry, should pay to the appellants, a moiety of the net

proceeds of the articles brought in their said ship Elizabeth Frith, with such interest as aforesaid, and the respondents, N. & G. Howell, should pay to the appellants a moiety of the net proceeds of the articles brought in their said ship Panama, with such interest as aforesaid; and that the appellants recover their costs of the said appeal, to be taxed and equally borne by the claimants and respondents, that is to say, one-half by the claimants of the Elizabeth Frith, and one-half by the claimants of the Panama, as by the said decree will fully and at large appear. Which said decree of the said Circuit Court is, are your petitioners are advised, erroneous, and ought to be reversed.

Wherefore your petitioners, the said claimants and respondents, appeal from the whole of the said decree of the said Circuit Court to the Supreme Court of the United States, and respectfully pray that the said decree of the Circuit Court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the Circuit Court, and any part thereof, may be reversed, and a decree made dismissing said libel with costs, or such other decree as to the said Supreme Court shall seem just.

Dated New York, Oct. 17, 1855.

STEVENS & HOXIE,
Proctors for Appellants.
N. B. HOXIE, *Advocate.*

(Filed Oct. 18, 1855.)

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
For the Southern District of New York, in the Second Circuit.
Bond for costs and damages.

John H. Jones, Joseph Sampson, George F. Trimble, John D. Jones, Charles P. Stewart, Amos Willets, Samuel Willets, Jacob C. Newlett, Charles H. Jones, and Charles Hewlett and Charles H. Jones, executor of Walter R. and Joshua T. Jones,

vs.

The CARGO, &c., of the SHIP RICHMOND, Wm. R. Post and John Sherry, for themselves and other claimants, and Nathan Howell and Gilbert Howell, for themselves and other claimants.

Know all men by these presents, that we, Augustus Howell, of

Sag Harbor, N. Y., and James H. Syles, of the city of New York, are held and firmly bound unto the above-named libellants, in the sum of twelve thousand six hundred dollars, to be paid to the said libellants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twenty-third day of October, in the year of our Lord one thousand eight hundred and fifty-five.

Whereas, the above-named Nathan Howell and Gilbert Howell have prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above-entitled suit by the Judge of the Circuit Court of the United States, for the Southern District of New York:

Now, therefore, the condition of this obligation is such, that if the above-named W. & G. Howell shall prosecute their appeal to effect, and answer all damages and costs, if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

AUGUS. HOWELL, [L. S.]
JAS. H. SYLES, [L. S.]

Sealed and delivered, and taken and acknowledged, this 23d day of Oct., 1855, before me.

R. E. STILWELL,
U. S. Comm'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Augustus Howell and James H. Syles, being duly sworn, do depose and say, and each for himself saith, that he is worth the sum of twelve thousand six hundred dollars, over and above all his just debts and liabilities.

AUGUS. HOWELL,
JAS. H. SYLES.

Sworn to, this twenty-third day of Oct., A. D. 1855, before me,
R. E. STILWELL,
U. S. Comm'r.

I approve the above bond and sureties. New York, October 27, 1855.

SAM. R. BETTS.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
For the Southern District of New York,
in the Second Circuit.

Bond for costs and damages.

JOHN H. JONES, Joseph Sampson, George F. Trimble, John D. Jones, Charles P. Stewart, Amos Willets, Samuel Willets, Jacob C. Hewlett, Charles H. Jones, and Charles Hewlett, and Charles H. Jones, ex'r of Walter R. and Joshua T. Jones,

vs.

The CARGO, &c., of the SHIP RICHMOND, William R. Post and John Sherry and others, claimants, and Nathan Howell and Gilbert Howell et al., claimants.

Know all men by these presents, that we, Elias Wade, jr., and Henry F. Sewall, of the city of New York, are held and firmly bound unto the above-named libellants, in the sum of fifteen thousand and three hundred dollars, to be paid to the said libellants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twentieth day of October, in the year of our Lord one thousand eight hundred and fifty-five.

Whereas, the above-named Wm. R. Post and John Sherry have prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above-entitled suit by the Judge of the Circuit of the United States, for the Southern District of New York:

Now, therefore, the condition of this obligation is such, that if the above-named Post & Sherry shall prosecute their appeal to effect, and answer all damages and costs, if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

ELIAS WADE, JR., [L. S.]
HENRY F. SEWALL. [L. S.]

Sealed and delivered, and taken and acknowledged, this 20th day of Oct., 1855, before me,

R. E. STILWELL,
U. S. Comm'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Elias Wade, jr., and Henry F. Sewall, being duly sworn, do depose and say, and each for himself saith, that he is worth the sum of fifteen thousand three hundred dollars, over and above all his just debts and liabilities.

ELIAS WADE, JR.,
HENRY F. SEWALL.

Sworn to, this twentieth day of October, A. D. 1855, before me,
R. E. STILWELL,
U. S. Comm'r.

I approve the above bond and sureties. New York, October 27, 1855.

SAM'L R. BETTS.

By the Honorable Samuel R. Betts, one of the Judges of the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit:

To John H. Jones, Joseph Sampson, George F. Trimble, John D. Jones, Charles P. Stewart, Amos Willetts, Samuel Willetts, Jacob C. Hewlett & Charles H. Jones, Charles Hewlett & Charles H. Jones, executor of Walter R. and Joshua T. Jones, libellants.

Whereas, William R. Post and John Sherry, for themselves and others, claimants of a portion of the cargo, &c., of the ship Richmond, and Nathan Howell & Gilbert Howell, for themselves and others, claimants of a portion of the cargo, &c., have lately appealed to the Supreme Court of the United States, from a decree lately rendered in the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit, made in favor of your, the said John H. Jones, Joseph Sampson, George T. Trimble, John D. Jones, Charles P. Stewart, Amos Willetts, Samuel Willetts, Jacob C. Hewlett, Charles H. Jones, Charles Hewlett and Charles H. Jones, executor of Walter R. and Joshua T. Jones, libellants, ag'st the said William R. Post and John Sherry, for themselves and others, claimants of a portion of the cargo, &c., of the ship Richmond, and Nathan Howell, and Gilbert Howell, for themselves and others, claimants of a portion of said cargo, &c., and have filed the security required by law: you are, therefore, hereby cited to appear before the said Supreme Court of the United States, at the city of Washington, on the first Monday of December, 1855, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the Southern District of New York, in the Second Circuit, this 26th day of

October, 1855, and of the independence of the United States the eightieth.

SAM. R. BETTS.

Due and sufficient service of a copy of the within citation is hereby admitted.

New York, Oct. 27, 1855.

MOORE & McDANIEL,
Proctors for Appellees.